

# Report on Metropolitan Police Service handling of complaints alleging race discrimination

July 2013

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# I Introduction

## Background

Race has been an extremely sensitive, and at times toxic, issue for the Metropolitan Police Service (MPS). The disorders that began in Brixton in 1981, and then spread to other parts of the UK, led to Lord Scarman's report, which found that:

*“a major cause of the hostility of young black men towards the police was loss of confidence by significant sections of the Lambeth public in the police. The reasons included... distrust of the procedure for investigating complaints against the police; and unlawful and in particular racially prejudiced conduct by some police officers.”*

Steps were taken to respond to Lord Scarman's many recommendations. Yet, twelve years later, the ineffectual response to the racist murder of Stephen Lawrence signalled a further lack of confidence in policing by the black community and led to the Stephen Lawrence Inquiry. It found that institutional racism had played a part in the failure and that:

*“there is a striking and inescapable need to demonstrate fairness, not just by Police Services, but across the criminal justice system as a whole, in order to generate trust and confidence within minority ethnic communities, who undoubtedly perceive themselves to be discriminated against by “the system”... The need to re-establish trust between minority ethnic communities and the police is paramount. Such distrust and loss of confidence is particularly evident in the widely held view that junior officers discriminate in practice at operational level, and that they support each other in such discrimination.”*

Both inquiries clearly led to changes in policing policy, practice and training, not just in the MPS but nationwide. In its 2009 report 'The Macpherson Report - Ten Years On', the Home Affairs Select Committee noted that all witnesses recognised that the police service had made progress towards tackling racial prejudice and discrimination since 1999, including significant improvements in training and handling of cases involving hate and race crimes across London.

Nevertheless, the concerns and the lack of confidence of black and minority ethnic communities in policing – and the consequences of this – have been highlighted in more recent official reports since the Macpherson and Scarman inquiries. The report

of the independent panel set up to examine and understand why the riots of August 2011 took place said that:

*“Black and minority ethnic happiness following contact with the police is significantly worse than it is for white people – 64% compared to 77%... the Metropolitan Police... were cited in particular as having issues around positive or ‘quality’ contact. In our view, by improving the quality of minor encounters, the Met can dramatically improve their relationships with communities.”*

The IPCC’s review of complaints against the MPS’s Territorial Support Group, published in December 2012, highlighted allegations of racial discrimination against young black men as a continuing area of concern.

The IPCC itself, and its predecessor body, the Police Complaints Authority, owe their existence to the Macpherson and Scarman inquiries respectively, in order to introduce an element of independence and transparency into the handling of complaints against the police. Nevertheless, the most recent IPCC survey of public confidence in the complaints system (2011), showed a marked lack of confidence in the complaints system from ethnic minority respondents, 43% of whom feared that their complaint would not be taken seriously, and 40% of whom feared that they would suffer harassment if they complained. The comparative numbers for white respondents were 35% and 17%.

It was therefore of great concern that during 2011-12 there was a spate of allegations of racist behaviour by officers or staff in the MPS. This included allegations of overt racism and racially aggravated assault in some high profile cases referred by the MPS to the IPCC, which the IPCC later passed on to the Crown Prosecution Service to consider criminal prosecution.

These cases are particularly sensitive and have the capacity to seriously affect public confidence in policing among London’s diverse communities. Because of this, the IPCC launched a review of the MPS’s handling of complaints involving allegations of racism. In launching the review, the IPCC said:

*“The IPCC shares the public concern generated by these referrals and as a result we now plan to closely scrutinise how the MPS is handling racism complaints. We want to be satisfied that these cases are being dealt with effectively and in line with our previously released guidance on handling allegations of discriminatory behaviour and our position on stop and search.”*

In his subsequent response to the reports of racism, racially motivated abuse, assaults and bullying; MPS Commissioner Bernard Hogan-Howe stated that racists and racism had no place in the MPS.

The MPS continues to refer to us a significant number of allegations that include racial discrimination: in January 2013, such allegations accounted for one in four referrals, and in April 2013, one in five. This is evidence that the MPS takes such allegations seriously enough to refer them voluntarily, but it does indicate a continuing significant level of concern and complaint about discriminatory treatment. This is also a theme that is reflected in meetings IPCC Commissioners have had with representatives of black and minority ethnic (BME) communities in the course of their community engagement work.

Despite the progress made by the MPS in building relationships with BME communities, there remain some significant concerns in those communities about interactions with police officers, particularly those involving young men, and allegations of racism or discrimination occurring during such contact. As has been evident from the time of the Scarman Inquiry, a robust and effective complaints system plays an important role in addressing some of these concerns, building trust and ensuring that behaviour which is unlawful or inappropriate is identified and dealt with accordingly.

The importance of valuing diversity and dealing effectively with discrimination is central to the IPCC's work. It is expressed in our Statutory Guidance on the handling of complaints, issued to all police forces, which includes specific guidance on handling allegations of discriminatory behaviour. It is also reflected in our position statement on stop and search, which was circulated to all police forces in 2010. In addition, the Home Office's own guidance on standards of professional behaviour for police officers stresses the need to ensure equality and recognise diversity. In addition the National Policing Improvement Agency produced an Equality Standard in 2009 (currently under revision by the College of Policing), providing baselines for service delivery that aims to recognise diversity and tackle disproportionality. The Equality Act 2010 also places obligations on "public authorities" – which includes the IPCC and the police – to, among other things, eliminate unlawful discrimination. Race is one of eight protected characteristics covered by the Act.

## **Methodology**

This review sought to answer two core questions:

- *How robust are the MPS processes and procedures for dealing with allegations of racism and discriminatory behaviour made against police officers or staff?*
- *What needs to be done to improve public confidence in the handling of complaints, particularly among people from BME communities?*

Three separate exercises were undertaken:

1. An analysis of a complete dataset of allegations of racist behaviour by MPS officers or staff, made by members of the public in the period 1 April 2011 to 31 March 2012, provided by the MPS.
2. A paper-based file review of a sample of 20 complaint files. Files selected by the IPCC were:
  - complaints by members of the public;
  - cases that had progressed to a sufficient point to enable a meaningful review to be undertaken.
3. Monitoring of 61 cases referred to the IPCC by the MPS from 1 April to 31 May 2012, and an examination of 20 of those cases that had been referred back for local handling.

In addition, the experience of five IPCC independent investigations into allegations of racism has informed this report.

## **Racism complaints**

Allegations of racism and discrimination against MPS officers or staff fall into different categories. Sometimes they are allegations of blatant racist actions or behaviour, such as racist name calling, or using racist language – usually underpinned or accompanied by other overtly negative behaviours, such as intimidation, harassment, bullying or lack of professional service delivery. However, the actions complained of may also take the form of covert racism, where people of different racial, ethnic or national background are in fact treated in a discriminatory way, unfairly or poorly. In some cases, this is intentional. In others it is unintentional, as a result of subconscious negative racial stereotypes that inform or influence behaviour or attitudes.

The second type of behaviour is the most challenging to prove in an investigation, as it is based on the perception of the complainant and there is rarely any corroborative evidence to support the allegation. However, such behaviour is likely to be more pervasive and hence more harmful. Simply because officers recognise that it is not permissible to express overtly racist beliefs does not mean that the feelings and perceptions that lie underneath have necessarily disappeared. Unconsciously or consciously, they may be exhibited in the way certain individuals or groups are treated, spoken to, or indeed avoided or ignored:

*“The cumulative effects of unpredictable and seemingly trivial behaviour such as avoidance of ethnic minorities, closed and unfriendly verbal and non verbal communication, and failure to provide assistance, is more damaging. Apparently harmless interactions, including racist assumptions and questioning about where somebody is from, also convey messages about marginality and not belonging. This subtle racism may contribute to the racism perceived by minority groups in higher status professions and organisations”.*<sup>1</sup>

What is far from evident to an officer may therefore be very apparent to a complainant, particularly if it forms part of a pattern of experience. Furthermore, the perceptions of any complainant, and even more so any community, will condition relationships between them and the police, and therefore need to be acknowledged and responded to, even if it is explanation, rather than blame, which is needed.

Our review sought to explore how effective the MPS was in dealing with all kinds of allegations and whether its systems and procedures are robust enough to ensure that complainants received a fair and transparent service.

## **The complaints framework**

The police are required to abide by “Standards of Professional Behaviour”, which are set in a schedule to the Police (Conduct) Regulations 2008. Breach of any of these standards can be grounds for misconduct proceedings. The standards include, with particular reference to equality and diversity, that:

*“Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.”*

This then formed the basis of the Equality Standard promulgated by the now-defunct National Policing Improvement Agency. It should also be recognised that, for the police as for members of the public, racial harassment, and certain forms of discriminatory treatment, may also be criminal offences, either alone or as aggravating factors.

The Police Reform Act, and the IPCC’s Statutory Guidance to police forces (first issued in 2005 and reissued in 2010 and 2012), recognise that the vast majority of complaints, including those alleging discrimination, will be dealt with by the police themselves, in many cases by front-line supervisory officers rather than professional standards departments. Most of the cases reviewed by the IPCC were dealt with

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<sup>1</sup> British Journal for Medical Practitioners website

before the most recent reissue in November 2012, and should therefore have reflected the guidance issued in 2010, and specifically Annex B, on dealing with cases of alleged discrimination.

The IPCC's guidance recognises that complaints of discrimination can cover a range of degrees of seriousness. At the lower end, complaints can be locally resolved (i.e. without formal investigation) but this is not a mechanism for pacifying the complainant or minimising the complaint: it requires a dialogue with the complainant to establish what, in his or her view, would be a satisfactory outcome. More serious allegations have to be formally investigated, and any allegation of criminality or misconduct aggravated by race, or any other discrimination, must be referred to the IPCC.

The guidance sets out a number of key principles for investigators dealing with allegations of racism. They reflect good practice for dealing with complaints in general, as well as the specific requirements where there is an allegation of discriminatory treatment. These principles include the following:

- The process for handling allegations of discriminatory behaviour should be **proportionate and fair**.
- Investigations, especially those that may have an impact on wider communities, should be carried out in a climate of **openness and transparency**.
- The guidelines place a particular emphasis on the need **to look for evidence from which a conclusion may be drawn**, recognising that it is unlikely that an officer or police staff member will make admissions if he or she fears dismissal may result.
- It is rare that objective evidence of direct discrimination exists. In some investigations it may be reasonable to **look at a pattern of behaviour** and to consider whether this pattern supports an allegation of discriminatory behaviour.
- Recognition should be given to those circumstances where the facts of the case indicate that the officer or staff member has behaved with integrity, but the outcome was unfair to the complainant. An officer accused of racism or discrimination may not always face misconduct but in some circumstances will be provided with **training or support** to learn from the experience to avoid repeating the behaviour that gave rise to the complaint.
- **Proven allegations** where there is significant detriment to the complainant or clear evidence of a discriminatory attitude or behaviour would almost invariably lead to formal misconduct or gross misconduct proceedings.



- The investigator must establish his or her conclusions based on the **balance of probabilities**. The aim of the investigation is to find out if anything has gone wrong. A fair investigation should lead to conclusions and recommendations that are evidence based. It is therefore important that investigating officers look at the full range of evidence impartially and without any presumptions about the complainant or indeed the police officer or staff member.
- The basis for any effective investigation is **an assumption of good faith** on the part of the complainant. This does not minimise an investigator's commitment to establishing the facts.
- **Assessing the gravity** of the allegation is an important factor in determining how to proceed and in ensuring consistency. This should be revisited and reassessed as more information becomes available. The guidance sets out a number of factors that can be considered in doing so although it is made clear that these are neither definitive nor prescriptive.

This is not an exhaustive list but sets out some of the key principles to assist investigators in dealing with allegations of discrimination. The guidance provides practical examples and advice on referrals, investigations and determining outcomes. It is intended to provide a road map for investigators whilst recognising that each case will be dealt with on its own merits. The IPCC is currently revising its guidance on dealing with allegations of discriminatory behaviour to ensure that it reflects changes in the law and best practice. This will be published as a separate document to supplement the IPCC's Statutory Guidance.

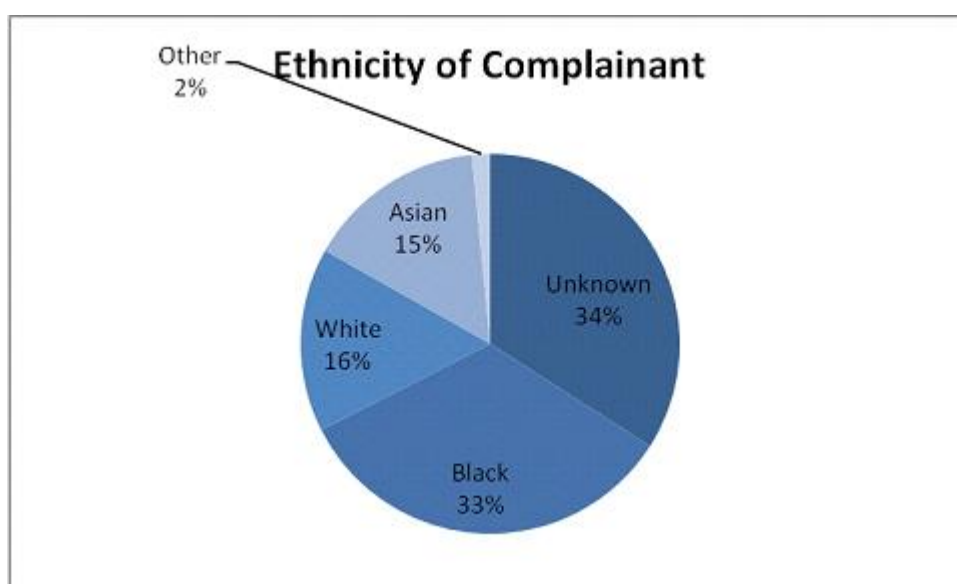
## II 2011-12 data: analysis and review

### Data analysis

This review was an analysis of a complete data set of allegations of racist behaviour by MPS officers or staff between 1 April 2011 and 31 March 2012, provided by the MPS. It was a desktop exercise and no supplementary information was sought, for example by interviewing complainants or officers. The analysis is therefore restricted to available evidence on file and was intended to provide context for the more detailed file review that follows.

The following was noted:

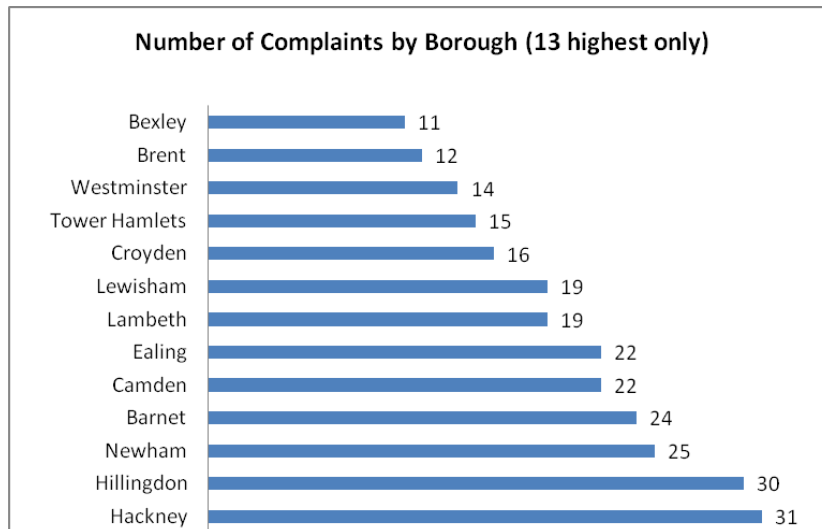
- A total of 511 allegations containing an element of racist behaviour were received by the MPS during the analysed period in relation to MPS officers and staff.
- The majority (360) of the allegations were made by male complainants, 137 allegations were made by female complainants, the gender of the complainant was not recorded for 12 allegations, and two allegations were submitted by solicitors on behalf of complainants.
- The ethnicity of complainants was not recorded in 174 allegations. Where data was recorded the three largest categories were “Black” (171) followed by “White” (80), and “Asian” (78).



- Just over 10% of allegations arose from stop and search incidents (53).
- The rank of officer most frequently complained about was police constable (330), with police sergeants (32 allegations) the next. The identity/rank of the officer was not known in 20% (103) of cases.



- The police unit with the largest number of allegations was the Territorial Support Group, with nearly 10% (50) of allegations. The next highest was traffic with 18. Other allegations were spread across other units, with the lowest being CO10 (central communications), CO19 (specialist firearms), HR, SCD5 (child abuse investigations), and SCD7 (serious organised crime command) which had one allegation each.
- The largest number of allegations was received in Hackney (31), followed by Hillingdon (30), Newham (25), Barnet (24), Camden (22), Ealing (22), Lambeth (19), Lewisham (19), Croydon (16), Tower Hamlets (15), Westminster (14), Brent (12), Bexley (11). The London boroughs with the fewest allegations were Kensington & Chelsea, Islington, and Waltham Forest, all of which had two or fewer allegations.



- Local Operational Command Units dealt with over half of the allegations (275); the MPS Department of Professional Standards (DPS) was responsible for handling 223; the IPCC conducted three independent investigations and supervised four investigations; the MPS Customer Services Team dealt with five allegations; and there was one concern about civilian staff dealt with by the Police Staff Discipline Unit.

## Complaint review findings

This was a paper-based file review of a sample of 20 of the above complaint files. Files selected were complaints from members of the public that had progressed to a sufficient point to allow a meaningful review to be undertaken. Complaints in which the IPCC had already been involved were excluded. The files were reviewed to assess compliance with IPCC Statutory Guidance, in particular on dealing with allegations of discriminatory behaviour.

Of the 20 complaint files reviewed:

- 16 of the complainants were male, four were female
- Ethnicity: White(1), Caribbean(3), White & Black Caribbean(3), Indian(1), White Irish(1), Bangladeshi(1), African(3), Not known(7)
- 11 involved a street encounter
- 6 involved a custody encounter
- 4 involved stop and search<sup>2</sup>
- 10 were investigated by the DPS
- 10 were investigated on borough or by unit

<sup>2</sup> One incident was noted as both a street encounter and stop & search

- The complaint was upheld in only one of the 20 cases, as a result of which one officer received management advice in relation to his behaviour towards the complainant.

### ***Compliance with IPCC Statutory Guidance***

#### *Recording and understanding the nature of the complaint and understanding the complainant's wishes*

IPCC Statutory Guidance stresses the need to record the nature of the complaint and to engage with the complainant to find out what he or she wishes to happen as a result of making the complaint. It advises that people who believe they have been discriminated against may be reluctant to express this, and that it is therefore crucial that they have confidence in the person taking the complaint and can be reassured so that they feel able to explain the reason for the complaint. Even if the complainant does not specifically allege discrimination, the officer or investigator may decide that it could be a factor and should be recorded and included in any resolution or investigation plan.

In all 20 files reviewed, the record of complaints included the complainants' allegations. In 14 of the files, there was evidence that the MPS either spoke to or tried to contact the complainant to discuss the complaint. In six cases there is no evidence of this, though in two cases it is recorded that the complainant did not wish to be contacted.

In 17 of the 20 files there was no record of what the complainant wished to happen as a result of making the complaint. In one case the complainant is recorded as stating that he wanted someone to "*get done for it*"; in another the complainant's mother asked that her concerns regarding the treatment of her learning-disabled son be brought to the attention of the officer concerned; in a third case the complainant stated that he would like to see police "*re-trained in terms of their methods of engaging with the black community.*"

#### *Applying gravity factors and deciding on a suitable course of action*

IPCC guidance states that an important element in the handling of all complaints is the ability to assess the gravity of the allegation, to decide whether a complaint is suitable for local resolution or formal investigation, and the level of that investigation. The guidance provides a non-exhaustive list of gravity factors that may be taken into account, including:

- Does the alleged discriminatory behaviour involve words, attitude or actions?

- What was the impact of the alleged behaviour on the complainant?
- What is the nature of the evidence supporting the alleged behaviour and what other evidence is likely to be found in establishing what happened during the incident?
- What does the complainant expect as an outcome for dealing with the alleged discrimination?
- Has the impact of the incident affected, or is it likely that the impact will affect, the wider community or have a negative impact on views about the police service?

In only three of the cases reviewed was there evidence that the gravity factors had been considered, even when there were patterns, such as previous stops or searches, that evidently needed to be considered. The majority of cases were subject to local investigation; however one case was subsequently re-assessed by the MPS as suitable for local resolution. In the majority of cases there was only limited information recorded about possible sources of evidence, and it appears that officers concerned were routinely asked for brief accounts of incidents via email rather than specific questions being put to them.

In one case there was a suggestion that the complainant had raised similar issues before, but the impact of this was not explored. In another case, however, where the complainant was represented by a local race equality council, the investigation helpfully included an analysis of the profile of other drivers stopped in the area on the same morning as the complainant and this was provided to the complainant with the officer's explanation as to why the driver had been stopped.

#### *Understanding how the case might be resolved and setting terms of reference*

IPCC guidance also stresses the need for dialogue between the police and the complainant at the outset to seek to reach an understanding of how the complaint might be reasonably resolved. There was no evidence of this in any of the cases we reviewed.

IPCC guidance says that terms of reference for any investigation into allegations of discriminatory behaviour should always refer to the guidance, and that in the interests of transparency, and subject to the harm test<sup>3</sup>, it is good practice to give the complainant a copy of the terms of reference. There was evidence that terms of reference had been written in only a minority of the files reviewed, and there was limited or no evidence that these had been discussed and agreed with the

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<sup>3</sup> The Police Reform Act and regulations provide for an exception to the duty to keep people informed, if harm would be caused by that information being released

complainant, or provided to them. Where there was information on file about how the complaints were to be responded to, this focused on investigating potential misconduct of officers.

#### *Updating the complainant and other relevant interested parties*

IPCC guidance advises that regular communication during the progress of the complaint helps to build trust and confidence, both for complainants and those under investigation. In addition there are specific duties to disclose information under the Police Reform Act 2002, and a requirement to support and inform victims of crime of the progress of their case under the Code of Practice for Victims of Crime.

Only four of the files reviewed showed evidence of regular updating of the complainant. It is possible that some updates were given but not recorded on file; however the review was only able to assess the evidence on file. In three cases, the complainant indicated that he or she did not want to be updated, or did not respond to contact, but there was no such indication for the majority. Contact with police officers and staff was primarily focused on obtaining their account of the incident rather than updating them.

#### *Communicating outcomes*

IPCC guidance says that a person whose complaint against the police is investigated should receive a clear narrative explanation for what has happened, based on the facts established, which describes the context for any behaviour complained about. This should not concentrate only on whether there has been misconduct or individual unsatisfactory performance. There will be investigations that properly examine this and use procedures appropriate to do so. However, in many cases the focus of the investigation will be on giving an answer to the complainant and the force should consider whether the service provided did not reach the standard a reasonable person would expect, and uphold the complaint on this basis where appropriate.

The evidence from the file review was that outcome letters were sent at the conclusion of investigations; however the majority of them followed a standard format which focused on whether officers had a case to answer for misconduct without also considering whether there had been a failure in service. Some of these letters, particularly those drafted at borough level, were extremely poor. Investigating officers had obviously used templates and some appear to have used several template paragraphs mixed together, giving the impression that the writers did not understand what they were saying about the police complaints system. Letters were often defensive, with little evidence of a customer-focused approach to explaining anything.

There were, however, two examples of good practice where tailored letters had been sent that provided well structured, detailed responses to the allegations with good supporting evidence. These both came from investigators in the Directorate of Professional Standards.

#### *Offering apology where appropriate*

IPCC guidance states that forces should give appropriate apologies where a complaint is found to be justified. A sincere and timely apology can have a significant effect for both parties in defusing emotion and enabling resolution, as well as a willingness to learn. The evidence from the file review was that the MPS issued a standard, generic apology in the majority of cases, regardless of the outcome of the investigation:

*“I am only sorry that anyone working for the Metropolitan Police Service should have given you cause for concern, but you have my assurance that we are wholeheartedly committed to resolving all the points you have made to us.”*

Such a generic apology, with no reference to the specifics of the complaint, is of very little value to a complainant, as compared to an individually worded apology that reflects the outcomes of the investigation and identifies actions the force will take to improve service in the future.

#### *Identification of learning*

IPCC guidance highlights the importance of identifying learning from investigations and encourages forces to record learning that is suitably evidence-based, reasoned and specific, focused and as practical as possible to improve police practice.

There was evidence of learning having been identified and reported on to the complainant in only one of the 20 cases reviewed. In the majority of cases there was no indication from the file that evidence had been obtained which indicated a need for learning. However, in two cases there were clear indications that learning for individual officers should have been identified and addressed.

#### *Time taken to conclude the investigation*

The IPCC recognises that delay in dealing with complaints generates further dissatisfaction with the police complaints system, and forces are encouraged to conclude investigations in as timely a manner as possible, while recognising that this will be affected by factors such as the availability of witnesses and the complexity of issues.



The time taken to conclude investigations ranged from 26 days (one case) to six months (one case). The most common timescale was three or four months.

### *Quality of investigations*

Overall the investigations were highly focused on proving, or disproving, misconduct and did not properly address the issues raised. In some cases this may have been influenced by the fact that the investigating officer had difficulty communicating with the complainant and/or because the allegations were perception-based.

Even though exploring perception is difficult and time consuming, it is an essential part of dealing with race complaints and goes beyond examining the incident complained about in isolation. This difficulty may be compounded if, on the face of it, the complaint appears to be a minor one, or without obvious foundation. However, as stated above, the subtler forms of racism or discriminatory treatment may be just as damaging as, and more pervasive than, direct and overt racist behaviour or language. It does not appear that investigating officers, particularly at borough level, have had the time or training to explore such issues effectively.

### *General*

The overall impression of our findings was that the investigations conducted at borough level were noticeably poorer than those carried out by specialist staff within the professional standards directorate. The practice appeared to be to request an email account from the officers complained against, with no probing of their reply. This might, in a few cases, be an appropriate level of investigation but it is not appropriate in all cases, even where there is no corroborative evidence. Nor does this approach provide any confidence that the MPS is addressing the underlying issues or proactively tackling allegations of racism.

## Case study: poor local investigation

PC X and PC Y stopped a vehicle because they considered it to be driving very fast. The complainant was in the passenger seat. The complainant, who is black, and the driver, who is white, were asked to get out of the car. A decision was made to search the driver, the complainant and the vehicle for drugs under the Misuse of Drugs Act 1971. The initial search produced a negative result; a decision was made to conduct a strip search and the men were informed of this. PC X conducted a search of the driver first, which found nothing. PC X then took the complainant to a nearby block of flats to search him. PC X says that he asked the complainant to pull his trousers down, and then alleges that the complainant stuck his hands down the front of his trousers, and then put them up to his mouth. PC X claimed that he noticed a handful of small white wraps in the complainant's hand, which the complainant attempted to swallow, and therefore took hold of the complainant's jaw and told him to spit them out. He claimed that the complainant became "frantic" and tried to grab PC X's baton. PC X punched the complainant and used his incapacitant spray.

The complainant was arrested on suspicion of obstructing a drugs search. He was given a drugs test while in police custody, the results of which were negative. No further action was taken on the case, following advice from the CPS. The complainant's allegations against police were that:

- he was subject to an unprovoked attack by PC X, who punched him in the face and sprayed him with incapacitant spray without having cause to do so;
- PC X's actions were racially motivated because the complainant's associate was not subject to an assault.

The complaint was investigated locally and was not upheld. The complainant did not appeal to the IPCC. However, the IPCC file review raised the following concerns:

- There was no contact with the complainant after the complaint. No statement was taken.
- The investigating officer (IO) did not address or acknowledge the complainant's allegation of racial discrimination.
- The IO did not address comments from an inspector and a CPS lawyer stating that the decision to conduct a strip-search in a block of flats was 'questionable' and 'totally inappropriate'.
- No accounts were taken from the officers complained against. The IO relied solely on their arrest notes, which raised some serious questions regarding the legitimacy of the officers' actions.
- The evidence was not assessed to the required standard. The IO preferred the accounts of the officers over that of the complainant without applying the balance of probability.
- The complainant alleged that he had been subject to a racially aggravated assault. This matter was therefore mandatorily referable to the IPCC, but was not referred.
- The conduct was assessed as 'misconduct'. An allegation of racially aggravated assault should be assessed as 'gross misconduct'.

### **Case study: poor response to stop and search complaint**

The allegation concerned a stop and search of a black youth whose father complained about the high number of stops on his son and his friends in the area in which they live. The investigating officer (IO) merely spoke to the officers involved, who denied the allegation, and based his conclusion around that. The file review found:

- The IO did not speak to the family about their previous experiences with the police.
- He did not look at the stop/search statistics for that area/those officers.
- The outcome letter did not include information about what the MPS have learnt about stop and search and what actions are being taken to counter the negative perceptions it creates amongst communities. It is possible that such information might have gone some way to reassuring the complainant.

### III 2012 Referrals: thematic review

In order to gain more direct exposure to race complaints against the MPS, the IPCC asked for all incidents which occurred between 1 April and 31 May 2012 giving rise to a race allegation to be referred to us. This comprised 61 referrals. We applied our usual criteria in relation to whether we would independently investigate these cases: in other words, only the most serious allegations would be independently investigated. None of the referrals over this period reached this threshold.

The IPCC decided that 55 cases should be initially investigated under supervision. The remaining six were sent back for local handling. In each of the 55 cases the IPCC asked the MPS to contact the complainant – where there was a complainant – and clarify the nature of the allegations of discrimination, by asking the complainant the following questions:

- What actions of the officers led the complainant to believe they were discriminated against?
- What behaviour of the officers led the complainant to believe they were discriminated against?
- What language of the officer led the complainant to believe they were discriminated against?
- Why does the complainant believe they were treated differently?

If a response was received from the complainant, the IPCC re-assessed the details of the complaint to determine whether the matter was suitable for ongoing monitoring. The test which was applied to determine whether the matter should continue to be supervised was:

- Is the complaint based on the complainant's perception that they have been discriminated against, or does the complaint allege overt racism or display a difference in treatment with no ostensible explanation for that difference?

If it was the complainant's perception that they had been discriminated against, and there was no evidence to support that perception, the IPCC sent it back to the MPS for local handling, on the basis that these were issues that should be capable of being addressed, at least initially, through the local resolution process, and asked to be kept informed of the outcome.

In a number of cases, the complainant did not reply to the questions raised in the police contact. In these cases, the IPCC wrote to the complainants, asking for their co-operation with the investigation into their complaint. In 13 cases, the IPCC also

received no reply from the complainant, and these complaints were therefore also sent back for local handling.

In total, 39 cases were locally handled by the MPS without IPCC supervision. The IPCC has received 36 final reports or outcome letters, of the remaining three; one complaint was withdrawn, one was dispensed with and one remains outstanding. Eight complaints were locally resolved; the remaining 28 were formally investigated, but none were upheld. Six of those whose complaints were not upheld appealed to the IPCC. Two appeals were upheld by the IPCC, three were not upheld and one could not be dealt with as it was out of time.

The IPCC asked the MPS to provide the outcome letter sent to all complainants, and carried out further analysis of 20 of these cases. Bearing in mind the basic principles of the IPCC guidance, the Standards of Professional Behaviour and established best practice, we considered:

- Fairness and proportionality
- Application of gravity factors
- Application of the balance of probabilities
- Communication of the outcome.

## **Complaint review findings**

### **Local Resolution**

Local resolution offers the opportunity to resolve issues quickly and effectively, but can only be used in certain cases. The test that must be applied is as follows:

*“that the conduct complained of (even if proved) would not justify the bringing of any criminal or disciplinary proceedings against the person whose conduct is complained of, or...*

*the conduct complained of (even if proved) would not involve the infringement of a person’s rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998).”*

If used effectively, local resolution can prevent issues from escalating, facilitate organisational learning and improve police/ community relationships. However, this will only be the case where a force takes the complaint seriously, and fully engages with the complainant in resolving the issues of concern. This requires time, effort and understanding.

Local resolution was attempted in only eight cases.

## **Case studies: effective local resolution**

### **Case 1**

The complainant called police to his taxi firm as three youths were banging on the windows of the premises and using abusive words towards the staff. Police said that they were too busy to send anyone to the premises. The complainant believed this was because he is Asian. This was the second time this had happened. The matter was resolved by way of police visiting the complainant to discuss his concerns, as described:

*In relation to the racial aspect, the complainant accepts that he has no objective basis to suspect an underlying racial motive for his perceived poor service. He simply says that from his perspective the poor service "might" be down to the fact that he is Asian. It was not a strong conviction on his part and he didn't raise the matter during our conversation until I broached the topic.*

*The complainant is happy to resolve this matter with me contacting local officers to make them aware of his issues. I'll send an email to his local chief inspector. I think that the complainant needs a personal visit to hopefully restore his confidence in local policing.*

### **Case 2**

The complainant was stopped by two officers while driving his Lamborghini; the officers stated that his vehicle was too noisy and should not be on the road. He stated that they were unprofessional and one of them told him to take the vehicle back to his own country, which he found offensive, particularly as he lives in London and the vehicle is UK registered and insured. The MPS contacted the complainant to clarify his allegations in relation to racism. The complainant claimed that the officer told him to take his vehicle 'home'. It was his perception that 'home' meant 'home to his own country'; however it is possible the officers were referring to the complainant's home in the UK. The complainant also stated that, during his interaction with the officers, a number of other sports cars drove past being driven by white drivers. This was locally resolved and the complainant received the following letter:

*"I am glad to report that I have now done everything you asked me to do in connection with the complaint you made on...*

*I have taken the steps that are outlined in the attached copy of our agreed action plan, which you and I talked about over the telephone on... your concerns have been discussed with the officer in question and I have focused in depth the following issues*

- 1. Courtesy and Professionalism*
- 2. Expectations when dealing with members of the public*
- 3. The officer's use of the legislation regarding vehicles causing a nuisance*

*We take any complaint against the police very seriously. You have my assurance that we are committed to resolving the points you raised with us and improving the service we offer to the community."*

The following case would have been suitable for local resolution, but it was not attempted:

### **Case study: not addressing the complaint**

The complainant alleged that an officer had said *“it’s pointless talking to you people.”* The complainant is of African descent and found the expression ‘you people’ to be racially offensive.

The IO concluded: *“[PC X] has admitted that he used words to the effect of ‘pointless, waste of time’, however there is no evidence to suggest that there was an element of discrimination in his words.”*

The IO did not address the issue that it was the words ‘you people’ that had caused offence.

### **Local investigations**

The standard of local investigations was, in general, poor. In the cases we examined, investigating officers (IOs) appeared to focus on establishing if the evidence supported the allegation, rather than simply trying to establish what, if anything, had gone wrong. This approach is very unlikely to be able to deal effectively with complaints of perceived racism, or indeed circumstances where there is a conflict of evidence. Two extracts from outcome letters to complainants illustrate this:

*“My role within this Directorate of Professional Standards is to ascertain if there is credible evidence of any failure by police officers contrary to the Police (Conduct) Regulations”. (DS Investigating Officer)*

*“The purpose of this investigation is to assess the evidence that is available and determine, based on that evidence, whether the officer acted inappropriately or otherwise. I should inform you that there is no onus on the officer to prove their innocence; the onus is on me to prove their allegations” (Acting DI)*

The review also showed that IOs did not look for additional evidence in support of the complaint. In 13 of the 20 cases that we reviewed, the IO had made no effort to obtain additional evidence that could have supported the complainant’s statement. This included statements from other witnesses and in one case, which the IPCC later upheld on appeal, CCTV evidence which we established would have been available if requested.

From the outcome letters provided it was clear that, routinely, more credibility was given to the statement of the officer accused in the complaint than the complainant, as illustrated by the following:

### **Case study: poor application of the balance of probabilities**

*“PC X states: “Where Mr A alleges that I told him ‘You were called paki because you followed them’ and that I said ‘They said ‘sorry... what else do you want?’ is completely untrue and was not said by myself or colleagues. This is not something I would ever consider saying to someone.” In relation to this allegation PC Y says “This is completely untrue and was never said, neither is it something I would expect PC X to say”. There are no independent witnesses to this conversation. When the evidence is considered on “the balance of probabilities” this element of the complaint is not upheld and there is no case to answer for PC X.”*

The IO did not take a statement from the complainant or make any attempt to obtain CCTV evidence which the complainant stated would have supported his complaint. The IO suggested in his outcome letter that he had tried unsuccessfully to contact the complainant who replied as follows:

*“I don’t understand what attempts he is talking about. I received a letter with an email address to contact but as you can see from the attached bounced email, it bounced. I contacted the deputy borough commander and asked him to pass me onto the right department. To date I have had no contact to get a statement from me... After the incident I was really distressed and was shocked. Why do you think I made such an effort to complain about officer x? I should have taken rest and relaxed but instead I spent time to write the complaint as I was really disgusted by the racist behaviour of the officer... It seems like none of my complaints were taken seriously and it seems that as the police officers said they haven’t done what you mentioned in your complaint, we are not taking any action’.”*

In most cases, the IO felt that the officer’s denial of any racist behaviour was sufficient to conclude that the complainant’s allegation was ‘not capable of proof’. In eight out of 20 cases the IO had made limited attempts to look for additional evidence and/or had made passing reference to the King formula<sup>4</sup>, but it would appear that IOs generally are not properly conversant with the IPCC guidance.

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<sup>4</sup> The King formula: is there a difference in diversity and a difference in treatment to the detriment of the complainant, with no explanation for these differences from any source? This derives from the case of King v GB China Centre. This was very influential in the early development of guidance and has been developed further in current case-law.



### **Case study: attempting the “King formula”**

The complainant was stopped by police while driving on the motorway. He alleges that officers were rude and aggressive and he attributes this behaviour to the fact that officers were racist.

The IO accepted without question the officers’ explanation that they cannot be racist because they did not know the complainant’s place of birth (Iran) at the time they dealt with him. The IO did not acknowledge that racial discrimination can be purely based on someone’s appearance e.g. the colour of their skin. The complainant had stated in his letter of complaint that English is not his first language; therefore the ‘difference in diversity’ strand of the King formula (see footnote 4) is clearly made out.

The IO concluded: *“I have asked myself the question why the officers would have treated you differently and I can find no explanation.”* The complainant had made it more than apparent in his letter of complaint that he felt the officers had treated him differently because of his ethnicity.

We also had concerns about the way in which the balance of probabilities was applied. When it was the complainant’s word versus that of the officer, the IO rarely made an assessment of whose account they found more credible. If the complainant alleged that they had been called a racially pejorative name, and the officer had denied doing so, the complaint was invariably not upheld on the balance of probabilities, with no further examination of the allegation and in some cases without consideration of the evidence of other witnesses. IPCC guidance states that if it is only the complainant’s word versus that of the officer, other factors should be considered, for instance whether the officer has received other complaints alleging racist language or behaviour. This was not routinely applied.

### **Sub Judice**

We were concerned about the practice of cases being considered *sub judice*, that is not progressed because of related criminal proceedings against the complainant. There appeared to be little relation between the complaint allegations and the matters being considered by the courts and therefore little need to halt consideration of the complaint itself. Treating cases in this way creates undue delay and a perception that the MPS is not interested in dealing with the allegations of discrimination.

## Case studies: why sub judice?

### Case 1

The complainant was arrested for robbery at a neighbour's address. The complainant alleges that he was racially abused by the arresting officer. The complaint was held to be *sub judice* as the complainant was due to appear at court charged with offences relating to the robbery.

On the face of it, the alleged racist comment could be investigated without delay notwithstanding the criminal proceedings. It is unlikely that seeking an account from the officer subject to the complaint would prejudice criminal matters. If there were other witnesses to the alleged racist comment, an assessment would need to be made as to whether the complaint investigation could prejudice their evidence.

### Case 2

The complainant's partner was issued with a Fixed Penalty Notice (FPN) for driving without the appropriate insurance. Police also towed his car away. The complainant states the officers' actions in seizing her partner's vehicle were disproportionate and unlawful as officers did not have any grounds for believing the car was being driven without insurance. She is adamant that the officers only stopped her boyfriend because he was black and only seized his car because of the colour of his skin. When submitting the complaint, the complainant provided the MPS with insurance documents which showed that her partner was indeed insured at the time of the incident. The MPS nevertheless decided that the complaint should be *sub judice* because the complainant had chosen to contest the FPN and the matter was being considered by the MPS' Criminal Justice Unit (CJU).

Three months passed and the complainant heard nothing from the CJU and the complaint remained *sub judice*. The complainant became very frustrated and wrote to her Member of Parliament who in turn wrote to the IPCC. The IPCC made enquiries with the MPS, expressing surprise that the complaint was still suspended when the complainant had provided evidence which appeared to show that the FPN had been issued incorrectly. Although initially reluctant, the force eventually asked the CJU to review the matter. The CJU quickly determined that all of the complainant's documents were in order, the FPN was rescinded and the complaint investigation began.

Had the MPS reviewed the complainant's documents at the time the complaint was made rather than immediately placing the matter *sub judice*, the three month delay could have been avoided. The delay, together with the handling of the substantive issue, fuelled the complainant's perception of discrimination and her belief that allegations of racial discrimination are not treated seriously.

## Communicating outcomes

Outcomes were communicated either by letters alone, or letters enclosing investigation reports. The latter were almost invariably difficult to understand and full of jargon. Some letters however reflected a genuine desire to engage with the complainant even where the outcome was not in their favour. There were some outcome letters which stood out as examples of good practice. The majority were sent from the DPS, rather than boroughs. The following are extracts:

### **Case studies: good communication of outcomes**

*"I would first of all like to take the opportunity to thank you for your engagement in the police complaints process. I very much appreciate the time you provide me with, when I visited you at your home address in company with my colleague and took a statement from you and your son.*

*"I realise that this was a very frightening and embarrassing incident for you and I am sorry for the distress you were caused. You told me that you were recognised by several passers-by who then 'tweeted' about what they had seen. As agreed, I sent you a letter of explanation that you could show to the Prince's Trust if your good character was called into question as a result of the incident. Please contact me if you have not received it.*

*"It is not a case that I do not believe what you have said; after all there is no motivation for you to lie about the incident. It is simply a case that I can't show to the required standard that the officer actually took this action.*

*"Whilst I have not upheld your complaint, it remains my obligation to consider if the MPS, or for that matter [officer x], can learn from what has happened. I do not believe that our organisation can learn from these events. However, I feel it prudent to request that a constructive discussion be held between [officer x] and his line manager in respect of the use of discretion and the potential risks to officers identifying themselves as such in heated off-duty situations. I intend to provide a copy of this report to both [officer x] and his manager to use as a basis for a meaningful examination of events... whilst I am mindful that [officer x] is a very experienced and long serving police officer, one never stops learning particularly in such a diverse and dynamic occupation as policing."*

By contrast, the following, which was representative of the majority of cases reviewed and dealt with at borough level, is an example of bad practice:

### **Case study: poor communication of outcome**

The complainant wrote to police complaining that an officer who had visited him at his home had acted in a racist manner. It is evident that the complainant suffered from mental health problems. The complaint was passed to the officer's inspector to issue a response. The outcome letter to the complainant provides a brief description of the complaint process. The letter then simply states: '*your complaint is not upheld*'. There is no description of any investigation that took place or how the conclusion was reached.

## **Supervised investigations**

The IPCC continued to supervise 22 cases to conclusion. This in effect meant that the IPCC continued to monitor these cases against agreed terms of reference and received the investigation report. In supervising a complaint investigation under the Police Reform Act, however, the IPCC cannot exercise "direction and control" (i.e. making decisions that direct the course of the investigation) as this would compromise the role it has at a later stage in the process, to deal with any appeal against the investigation.

As a general rule the IPCC, on receipt of the investigation report, confirms that the terms of reference have been met but it does not agree the report or endorse its conclusions, which would be considered on appeal.

Of these:

- The IPCC has received 19 final reports. Five of the six conduct (non-complaint) matters found a case to answer. Of the 16 complaints, one was upheld and 13 were not upheld or found no case to answer.
- Four cases were referred to the CPS. In three cases no further action was taken. In one case an officer was charged and convicted of an offence under section 5 of the Public Order Act 1986.
- One case was discontinued as it was initially a conduct matter but became a complaint which was referred separately.
- One case is currently *sub judice*, i.e. pending related criminal proceedings.
- One case, previously *sub judice*, has been discontinued due to non co-operation.
- The IPCC has received two appeals, neither were upheld.

## Upholding complaints/ case to answer

Six supervised cases were upheld or resulted in a finding of a case to answer for misconduct:

- The complainant – a black man – was involved in an altercation with a white man. Both men contacted police and accused each other of assault. Police arrested the complainant but did not arrest the white man. The complainant alleged he had been discriminated against due to his ethnicity. The investigating officer did not make out a case of discrimination, but found that the MPS had failed to record the complainant's allegation of assault. The complaint was upheld as a 'quality of service' matter.
- An off-duty special constable, after showing his warrant card, was alleged to have racially abused door-staff outside a nightclub. The officer was charged and convicted with an offence under section 5 Public Order Act 1986 (not racially aggravated). The officer subsequently resigned from the MPS. Notwithstanding that the officer had resigned, the IPCC requested that the MPS carry out a misconduct review. It was found that, on balance, it was more likely than not the officer had used the racially abusive language alleged. The officer's discipline record was endorsed with a finding of gross misconduct.
- While in a police carrier carrying out public order duties, the officer – a police sergeant – used the word "*nigger*". One of the officer's colleagues was deeply offended by the word and reported the matter to his superior. The officer admitted using the word; however he stated the term was not directed at anyone and that he was quoting from a film. Other officers who were present supported the officer's explanation that he was quoting from a film. The officer acknowledged the use of the word was inappropriate and stated he deeply regretted using the term. The matter was referred to the CPS who decided to take no further action. The officer was dealt with by the MPS by way of management action.
- An off-duty constable who was heavily intoxicated at a work function referred to some of her colleagues as "*Pakis*". An investigation found that, on balance, the officer did use the term. The matter was passed to the CPS who decided to take no further action. The IO found a case to answer for gross misconduct. The officer appeared before a misconduct hearing and was dismissed without notice.
- An investigation was carried out into allegations that a number of officers were sending and receiving racially offensive text messages using their private

mobile phones. Some of the messages were sent while the officers were on duty. The investigation concluded that there was a case to answer for 14 officers: six officers who sent racist messages are to face gross misconduct hearings. Eight officers who received but did not send messages were subject to management action.

- A member of the public, working in the street, observed a PCSO involved in a heated interaction with two black men. The member of the public heard the PCSO say to the black men “*chocolate shit*”. The matter was reported to the MPS. The PCSO admitted that there was a heated altercation with the black men, but denied using the phrase alleged. The black men were contacted but did not wish to assist the investigation. The IO upheld the complaint on the balance of probability, and stated he could see no reason why the member of the public would make up the allegation. The IO also noted that the PCSO’s description of the incident was not supported by the available CCTV, even though the CCTV did not have audio. The IO found that the PCSO had a case to answer for gross misconduct, and he has been dismissed following a hearing.

Although the other 13 cases were not upheld, the IO referred to IPCC guidance in each of these cases, and both investigations and outcome letters were of a much higher standard than was apparent from the cases that were not supervised. All cases used the gravity factors to at least some extent; four of these cases specifically used the King formula, and three cases looked at the demographics of the area and officers’ complaints history.

## Appeals

Complainants have a right of appeal against the outcome of a local or supervised investigation and the IPCC received eight appeals in relation to the 61 complaints that were dealt with by the MPS. The following are comments taken from the appeals:

*“I am writing to inform you that I wish to appeal the outcome of the investigation into my complaint by the Metropolitan Police, because I believe the police has failed to take all the available evidence into consideration, and has also failed to consider the evidence in a fair and non-bias manner to my detriment.”*

*“It would appear [police] would require overt racism to be demonstrated before they could accept that behaviours can be racial in tone and manner. It is the definition of how institutional racism works as defined by Macpherson which needs to be made apparent – it can be detected in the processes [and] the behaviours of non-BME people with the intention of treating us less favourably for no other reason than our race, culture and ethnic origin.”*

*“Yes I disagree due to the reason that the investigating officer’s investigation is in support to save his friend.”*

*“This was in my opinion a case of racial discrimination by the police, it’s hardly surprising that the investigating officer completely agrees with the actions of his officers, as this is what we’ve come to expect of institutions like these.”*

*“It seems like none of my complaints were taken seriously and it seems that as the police officers said they haven’t done what you have mentioned in your complaint, we are not taking any action.”*

*“I believe this is what happens to all racial complaints against police officers and at the end, they don’t admit any of their unprofessional comments and are free even though they are racists. They know they can get away with it by not admitting. The Met believes their officers and [does] not give any consideration to the public who make a lot of effort to complain...”*

Three of these appeals were upheld, four were not upheld, and one was unable to be considered as it was received out of time. However, whether or not there are grounds for upholding the complaint, these comments from complainants indicate a considerable degree of distrust about the way that their allegations have been handled. That is not surprising, given the issues raised in this review.

## **Independent investigations**

Five incidents involving allegations of racism were investigated independently by the IPCC under the oversight of Commissioner Mike Franklin. Of these cases, four were complaints and one was a conduct (non-complaint) matter:

- A referral received in August 2011 regarding a complaint alleging racist language against a 21-year-old man. PC Alex MacFarlane stood trial for a racially aggravated public order offence at Southwark Crown Court in October 2012. Two trials resulted in a hung jury. He was dismissed without notice following a gross misconduct hearing in July 2013.
- A referral received in August 2011, initially supervised and re-determined as an independent investigation in October 2011. This was an alleged assault on a 15-year-old boy at Forest Gate police station. PC Joseph Harrington was acquitted of the charge of assault occasioning actual bodily harm in March 2013 at Southwark Crown Court. A gross misconduct hearing is awaited.
- A referral in May 2012 of allegations of racist comments made among a group of MPS officers. PC Kevin Hughes and PC David Hair both faced two charges of public order offences, one of which was racially aggravated. Both officers



were acquitted at Westminster Magistrates' Court in November 2012. In March 2013 PC Hughes was dismissed and PC Hair received a final written warning.

- A complaint of racial abuse made about an incident in December 2011 was referred to the IPCC in February 2012. A local investigation was directed but the MPS initially failed to identify any officer near the vicinity at the time of the alleged incident. The matter was re-referred in April 2012 when the MPS identified a patrol car in the vicinity of the complaint, and an independent investigation began. An independent witness corroborated the officers' accounts. The investigation did not uphold the complaint and determined that neither officer had a case to answer for misconduct.
- A referral in April 2012 of an incident at Forest Gate Police Station on 24 September 2011. The complainant alleged that during his arrest he was racially abused by one of the arresting officers. He also stated that he was punched in the face by the same officer. Medical and other evidence did not support the complainant's account and no case to answer was found for any officer.



## IV Findings and Conclusions

Our review set out to determine how well the MPS dealt with allegations of racism and discrimination made against its officers or staff, and what more needed to be done to improve public confidence in this crucial area.

While we found a number of examples of good practice, they did not represent the experience of the majority of complainants whose cases we reviewed, and they tended to be cases where the complaint or complainant had a public profile, or the support of an organisation. All too often the MPS's handling of complaints alleging racism was not sufficiently robust, fair, or customer focused.

As set out earlier in this report, allegations of racism include both overt and covert racist language or behaviour. From the evidence in our report, in particular from the independent and supervised cases, it would appear that racism is tackled robustly only when it is both overt and supported by independent evidence, such as mobile phone footage or a whistleblower, and that only such cases go to court or result in misconduct action.

This leaves a very considerable gap. In relation to overt racism, many allegations are a complainant's word against an officer or officers. There are concerns among BME communities that complainants will only be believed if they have independent evidence, and that the absence of this allows racist police officers to act with impunity. The only way to address these concerns is for investigators to demonstrate that such complaints are taken seriously and that investigations do not stop simply on the basis of a denial by the officer. The following finding illustrates this point:

- In investigating complaints involving a conflicting account between a complainant and a police officer, MPS investigating officers made scant or no attempt to look beyond an officer's denial, generally concluding that "on the balance of probabilities" the complaint was not upheld. While such poor application of the balance of probabilities has also been noted in other complaints, the denial of racism without any effort to consider which account is more credible will also exacerbate the original grievance.

Investigations not only lacked robustness in the application of balance of probabilities, but, particularly where they were dealt with at borough level, rather than by the Directorate of Professional Standards, they appeared to take no, or minimal, account of IPCC guidance. We found that:

- The MPS approach to applying gravity factors to investigating complaints, as set out in IPCC guidance, was inadequate and lacked consistency. This undermined the robustness of outcome decisions, the overall handling of the complaint and the complainant's confidence in the process.

Where complainants had been charged with a criminal offence, including such minor matters as fixed penalty notices, the investigation of complaints was delayed inappropriately. We found:

- A tendency not to progress complaints of racism where there were related criminal proceedings against the complainant. Where the complaint involves an allegation of racism there is frequently no relation between the complaint allegations and the matters being considered by the courts. Over-zealous application of "sub judice" principles creates undue delay and a perception that the MPS is not interested in dealing with the allegations of discrimination.

Allegations of covert, underlying or unwitting racism are even more difficult to deal with – and on the evidence in this report, even less likely to be taken seriously. We found:

- Whether the complaint was resolved or investigated, there was very little evidence that those tasked with dealing with complaints, particularly at local borough level, made efforts to explore the allegation of racial discrimination with the complainant – in particular, to comply with IPCC guidance which says: "*...people dealing with complaints should encourage complainants to explain why they think a person serving with the police behaved the way that he or she did and demonstrate a willingness to accept and investigate this aspect of the allegation*" (para 3.28).

Poor communication with complainants, and reluctance to locally resolve complaints effectively where appropriate, have been a constant theme not only in the MPS approach to race complaints but also in its complaints handling generally. The IPCC's report on complaints against the Territorial Support Group also stressed the need to recognise the complainant's point of view and legitimate grievances, understand the outcome sought and to resolve the complaint at an early stage, and for outcome letters that explain rather than alienate. In relation to race complaints, we found:

- The quality and quantity of communication with complainants was poor in general. Although a few letters reflected a genuine desire to engage with the complainant even where the outcome was not in their favour, the majority of outcome letters, and particularly those generated at borough level, were poorly written, defensive and full of jargon. As with the other deficiencies in

complaints handling noted above, a defensive approach to allegations of racism will exacerbate the original sense of grievance.

- The overwhelming tendency was to see complaints as allegations of misconduct to be “investigated” rather than as evidence of dissatisfaction that needed to be addressed. This failing is exacerbated when the complainant alleges racial discrimination – not only is the complaint not addressed, the negative experience is magnified by a failure to address the racial element. It was particularly concerning that in our file review only one of the locally investigated complaints was upheld. The message that “not upheld” complaints sends to BME communities is, in effect, that the MPS regards none of these complaints as legitimate grievances.

Where it is clear, after the allegations have been explored with the complainant, that an investigation will not achieve a meaningful result, the focus should be a restorative approach: fixing what went wrong, identifying learning for the officers and the organisation, or acknowledging a complainant’s legitimate perception.

There is a separate issue about access to, and willingness to use, the complaints system itself. It is clear, from surveys and from our own experience, that BME communities, and particularly young people within those communities, have very limited trust in the complaints system. It is, for example, surprising that only 10% of complaints about discrimination in the MPS during 2011-12 related to stop and search, even though this is known to be an activity that is, for many young people, the single largest cause of grievance and of alleged discriminatory treatment by London’s police. This strongly suggests that, while complaints are a litmus test of public confidence, they are not the complete picture – in particular of the confidence of young people who are the most likely to be stopped and the least likely to make a formal complaint.

We did find examples of good practice and they are cited in this report. They provide a platform for improvement across the MPS Guidance for dealing with race complaints already exists – but it needs to be embedded. This is not simply a matter for the MPS’s Directorate of Professional Standards. It needs to be tackled at all levels within the MPS, in particular in local boroughs, so that legitimate concerns of BME communities are not only addressed but seen to be so.

## V Recommendations

As stated in the introduction, race is, and will continue to be, a critical issue for the MPS. In spite of recent efforts, there are clearly significant concerns among BME communities, and sections within those communities, about the quality and fairness of interactions with the police. Given the importance of this issue to police-community relations in London, the MPS must demonstrate that it is responding to concerns and allegations and taking firm action where needed. The UK policing model relies on policing by consent, and it will not be possible to do so, or for the MPS to deliver a professional service, if sections of the population of London perceive that officers are able to act in an unfair and discriminatory way.

The MPS Commissioner himself has stated that there would be zero tolerance of racist officers, and some officers have recently been dismissed on these grounds. However, the evidence in this report does not provide confidence that there is an effective system for identifying and tackling this. In order for this to happen, there needs to be a cultural change in the way the service deals with complaints in general, and in particular in its understanding of the nature and manifestations of racist behaviour. The principles of good complaints handling will need to be embedded in all those parts of the MPS which regularly come into contact with the public, as well as within the Directorate of Professional Standards.

Complaints are not just about potential misconduct; they are an opportunity to improve public confidence and enhance organisational learning. This is particularly relevant in relation to issues of race and discrimination where training and increased cultural awareness are necessary to improve the interaction of police officers with the many and diverse communities in London. Our guidance stresses that the police should see all complaints as evidence of a potential problem and address the symptoms and underlying issues, as well as dealing effectively with the complaint itself. This is particularly important in relation to complaints alleging racial discrimination.

**We therefore recommend that the MPS focus on:**

- **Training and guidance for all those who deal with complaints from the public, whether at Borough or DPS level; to include**
  - The skills and knowledge needed to recognise and deal with allegations of both overt and covert racism;
  - Understanding the principles in the IPCC's Statutory Guidance in relation to complaints of discrimination, including the gravity factors;
  - the correct use of and approach in local resolution;

- the need to provide justifiable outcomes in local investigations which properly apply the balance of probabilities;
  - The need to engage effectively with complainants at the outset to determine the source of dissatisfaction and the route to take to deal with it;
  - Effective two-way communication – both listening and responding to complainants, using early meetings and providing letters and reports that are tailored to the specific circumstances of the complaint and avoid jargon and defensive language.
- **A DPS programme of dip sampling and quality control of race complaints, using some external expertise; to**
    - Identify and feed back where these principles are not being applied;
    - Identify good practice and seek to replicate it;
    - Examine and explain the differentials in race complaints by boroughs;
    - Publicise and feed back this data.
- **Promoting feedback at local level; through Borough Commanders' community networks; to**
    - Advise them on issues causing dissatisfaction in relation to complaints handling within BME communities;
    - Identify barriers to access to the complaints system in relation to certain communities or age groups and act on this;
    - Publicise complaints outcomes locally.
- **Using complaints to effect changes in policing policy and practice; to**
    - Identify systemic issues arising from complaints;
    - Provide mechanisms for feeding this into training, supervision, performance review and policy development at MPS and borough level.

## Appendix 1: Supervised investigations terms of reference

1. To fully investigate the circumstances surrounding the allegation of racist language, behaviour or difference in treatment due to race which has been made against an officer(s) or member of police staff belonging to the MPS. The investigation should be carried out in accordance with Annex B of the IPCC Statutory Guidance: Dealing with Allegations of Discriminatory Behaviour.
2. To prepare a written report on the findings of the investigation for the attention of the IPCC Head of Casework. Prior to the finalisation of the report, the IO will ensure that the IPCC is satisfied that the investigation has met the Terms of Reference.
3. To identify whether any subject of the investigation, in the investigator's opinion, has a case to answer for misconduct, gross misconduct or no case to answer. It is for the force to make determinations and recommendations with regard to disciplinary action.
4. To make recommendations on the culpability of any individual for any criminal liability and forward the report to the Crown Prosecution Service where appropriate.
5. To consider and report on whether the complaint has merit as a quality of service complaint and therefore should be upheld as a legitimate grievance.
6. If the complaint is upheld, to identify what impact this will have on the wider community and/or public confidence.
7. To consider and report on whether there is organisational learning, including:
  - whether any change in policy or practice would help to prevent a recurrence of the event, incident or conduct investigated;
  - whether the incident highlights any good practice that should be shared.

### Investigation milestones

The following actions should be completed by the appointed IO and monthly updates to the IPCC should include details of when milestones have been reached:

- (i) Account/statement to be taken from complainant. The account/statement to be taken in accordance with paragraphs B118 – B128 of the IPCC Statutory Guidance;
- (ii) A Severity Assessment to be conducted to determine whether the allegations, if proven, would amount to misconduct or gross misconduct;
- (iii) Officer(s) or police staff subject to complaint to be identified;
- (iv) Complaints history for the officer(s) or police staff subject to complaint to be reviewed to determine whether previous similar complaint allegations have been made or if there is evidence of a pattern of behaviour;
- (v) Identify and retrieve any written/visual evidence;
- (vi) Identify and interview any potential witnesses;
- (vii) Interview officer(s) or police staff subject to complaint. The interview to be conducted in accordance with paragraphs B153 – B158 of the IPCC Statutory Guidance;

- (viii) Assess the evidence in accordance with Section 4 of Annex B of the IPCC Statutory Guidance. Specifically, identify whether there was a difference in the treatment of the complainant, and if there was, identify whether there is a cogent explanation for that difference.

## Appendix 2: Complaints handling steps

The following sets out the steps by which a complaint alleging racial discrimination should be handled by the police (in this report, the MPS) bearing in mind the requirements set out by the current legislation and guidance.

### **Stage 1 – Recording the complaint**

Subject to any of the exemptions provided by the legislation<sup>5</sup>, the MPS should record the complaint<sup>i</sup>.

### **Stage 2 – Referral assessment**

The MPS should then decide whether the complaint meets the criteria for referral to the IPCC. Matters which should be referred are<sup>ii</sup>:

*“A criminal offence or behaviour which is liable to lead to misconduct proceedings and which, in either case, was aggravated by discriminatory behaviour on the grounds of a person’s race...”*

### **Stage 3 – Exploring possibility for local resolution**

If the matter does not meet the threshold for a matter that should be referred to the IPCC, or if the matter has been referred to the IPCC and referred back to the MPS, the MPS must consider whether the matter is suitable for local resolution or should be investigated<sup>iii</sup>. The test that must be applied is as follows:

*“...that the conduct complained of (even if proved) would not justify the bringing of any criminal or disciplinary proceedings against the person whose conduct is complained of, or ... the conduct complained of (even if proved) would not involve the infringement of a person’s rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998).”*

### **Stage 4 – Beginning the investigation – applying gravity factors**

IPCC guidance states<sup>iv</sup>: *“The investigator should be able to demonstrate that steps were taken to understand the complaint and the views of the complainant.”* The guidance provides a non-exhaustive list of gravity factors that may be taken into account, including:

- Does the alleged discriminatory behaviour involve words, attitude or actions?
- What was the impact of the alleged behaviour on the complainant?
- What is the nature of the evidence supporting the alleged behaviour and what other evidence is likely to be found in establishing what happened during the incident?
- What does the complainant expect as an outcome for dealing with the alleged discrimination?

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<sup>5</sup> Schedule 14, paragraph 8, Police Reform and Social Responsibility Act 2011



- Has the impact of the incident affected, or is it likely that the impact will affect, the wider community or have a negative impact on views about the police service?

### **Stage 5 – Special requirements/ severity assessment**

A complaint should be declared subject to special requirements<sup>v</sup> if:

*“...there is an indication that a person to whose conduct the investigation relates may have – (a) committed a criminal offence, or (b) behaved in a manner which would justify the bringing of disciplinary proceedings.”*

If there is an indication that the officer or police staff complained against has behaved in a racially discriminatory manner, and there is no credible evidence to the contrary, the investigation should be declared subject to special requirements.

If an investigation has been declared subject to special requirements the investigator must, as soon as reasonably practicable, conduct a severity assessment<sup>vi</sup>. This assessment is whether the conduct, if proved, would amount to misconduct or gross misconduct. An indication that the person complained against has behaved in a racially discriminatory manner would generally denote gross misconduct.

### **Stage 6 – Investigation and report**

The investigating officer is expected to follow IPCC Statutory Guidance in relation to the investigation, which includes carrying out their duties impartially and with a presumption of good faith by the complainant until proven otherwise. They would be expected to:

- Collect available evidence and make reasonable efforts to identify independent witnesses.
- Look at the officer’s complaints history to see if there is a pattern of discriminatory behaviour.
- Ask the officer probative questions, not just: did you say the racist comment?
- In a case where it is the complainant’s word versus that of the officer, use the balance of probabilities test to state which account is thought to be more credible.

The investigating officer should provide regular updates to a complainant about the progress of the investigation, and a report on its conclusion. In cases that have previously been referred to the IPCC, the IPCC may request to see a copy of the final report even though it is a local investigation.

Complaints should be upheld where a complainant has a legitimate grievance.

For complaints made after November 2012, when changes to the appeal system came into effect, the MPS must now also decide who the relevant appeal body is<sup>vii</sup> if the complainant is not happy with the outcome. The IPCC will be the appeal body if:

- the complaint was previously referred;
- the complaint is about an officer above the rank of Chief Superintendent;
- the complaint, if proved, would justify the bringing of criminal or misconduct proceedings.

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<sup>i</sup> Schedule 3, paragraph 2, Police Reform Act 2002

<sup>ii</sup> Regulation 4, Police (Complaints and Misconduct) Regulations 2012

<sup>iii</sup> Schedule 14, paragraph 9, Police Reform and Social Responsibility Act 2011

<sup>iv</sup> Paragraph 9.11, IPCC Statutory Guidance 2013

<sup>v</sup> Schedule 3, paragraph 19B, Police Reform Act 2002

<sup>vi</sup> Schedule 3, paragraph 19B, Police Reform Act 2002

<sup>vii</sup> Regulation 30, Police (Complaints and Misconduct) Regulations 2012