

TO	Home Office
FROM	Independent Office for Police Conduct
DATE	15 February 2023
REGARDING	Home Office review into the process of police officer dismissals

Our interest in this matter

1. The IOPC oversees the police complaints system in England and Wales and has a statutory duty to secure and maintain public confidence in it. We are independent and make decisions independently of the police, government and interest groups. We investigate the most serious complaints and incidents involving the police. We also conduct reviews of police investigations into death or serious injury matters and where members of the public are unhappy with the way the police have handled their complaint. In addition, we have a broader role in sharing learning to help the police service develop and improve.
2. The IOPC does not set standards for or oversee the police disciplinary system in the way it does for public complaints. Under legislation, we are not responsible for deciding whether an officer should be dismissed or receive another sanction. However, where, following an IOPC investigation or review, we find that there may have been a significant failing or wrongdoing by a police officer, we have the power to determine that an officer's actions are considered at disciplinary proceedings. Those conducting the proceedings (who may be a panel chaired by an independent legally qualified person or a senior officer from the force concerned, dependent on the type of proceedings) decide whether the officer's conduct amounts to misconduct, gross misconduct, gross incompetence or none of these and, if so, what sanction or other action should be taken, including whether the officer should be dismissed.¹

¹ There are differences in the arrangements for senior officers, i.e. those above the rank of chief superintendent.

3. Although we are not responsible for making the final decisions on officers' conduct and what sanctions they should receive, we have a strong interest in ensuring that the disciplinary processes for those working in policing are fair and effective, and that they have an appropriate level of independence and transparency. The police have extraordinary responsibilities and powers, including powers that can impact on individuals' liberty and even their right to life. This makes it vital, for public safety and maintaining standards and confidence in the policing profession, that effective processes are in place to ensure those who have abused these powers, or otherwise fallen significantly below the standards required, do not remain in the police service.
4. In addition, if the disciplinary system and its outcomes are not seen to be fair and effective, it undermines confidence in the wider police complaints system and the work of an independent investigative body such as the IOPC. Our predecessor organisation, the Independent Police Complaints Commission (IPCC), recognised this. Prior to the 2015 reforms to the police disciplinary system, the IPCC argued that there needed to be an increase in the transparency and independence of disciplinary proceedings, particularly where officers had a case to answer for the most serious misconduct.
5. At that time, apart from proceedings for chief officers, the disciplinary system was a largely internal process carried out in private within individual forces and the outcomes did not always inspire public confidence or appear to reflect the seriousness of the issue. The IPCC was clear that it was not suggesting that it should be the decision-maker in these cases, as the misconduct panel would have heard all the evidence. However, it highlighted that families and complainants struggled to have confidence in an internal process that appeared not to support the findings of an independent investigation. The IPCC did not believe that the system was sufficiently independent to secure the confidence of complainants and the wider public, or to safeguard against actual or perceived impartiality in decision-making.
6. It was following concerns raised by the IPCC and other stakeholders, including policing stakeholders, and recognised by the Home Office, that reforms were introduced to ensure that misconduct hearings (which consider cases of potential gross misconduct) would be heard by a panel chaired by an independent legally qualified person and routinely held in public. We are aware that concerns have since been raised about decisions reached by panels/legally qualified chairs in some cases. We are also aware that some chief officers have expressed concern that they (i.e. chief officers) do not have the final say on dismissing officers who are guilty of gross misconduct.
7. The IOPC does not always agree with the final decisions reached by misconduct panels and in some instances, we too have had concerns about the quality of decision-making. We also understand why chief officers may feel frustrated when a misconduct panel rules that an officer should not be

dismissed when the chief officer considers that they are not fit to remain in their force. However, in our view, it is important to remember why previous reforms were made and why independence and transparency of decision-making in the most serious cases was considered necessary.

8. We have provided comment in relation to the Terms of Reference below. However, we would also highlight the following:
- We note that the Terms of Reference for the review include certain specific suggestions/considerations, and a mix of issues relating to vetting, misconduct and performance procedures, but indicate that the review will not be looking at these areas in the round. In our view, there needs to be clarity over what problem the review and any reforms are seeking to fix. We have concerns that, as presently framed, the review may be of limited value and/or result in legislative change that is not based on a full assessment of all relevant evidence and practical and policy considerations.
 - It is not possible to consider properly how effective overall the current police disciplinary system is at dismissing those whose conduct amounts to gross misconduct or gross incompetence without considering the earlier stages of handling, investigation and decision-making, as these earlier stages determine whether a matter gets as far as disciplinary proceedings in the first place.
 - While the review is focussing on the procedures to dismiss police officers, there are large numbers of civilian staff and contractors who also work in the police service. Misconduct or serious performance issues involving these individuals can also cause harm to members of the public and to trust and confidence in policing. Therefore, to assess fully how effective current arrangements are in ensuring that those whose conduct falls significantly below what is required do not remain in the police service, the procedures for those individuals also need to be considered.
 - We would be concerned to see reforms that reduce or remove independence or transparency in decision-making in respect of the most serious matters. In our view, the overarching objective must be to protect the public interest. It is important to recognise that the public interest and the institution's interest (at police service or individual force/chief officer level) may not always be the same. It is also important to consider how perceptions of independence can impact on overall trust and confidence in the system and its outcomes.
 - We think that consideration should be given to whether wider reform is needed and, in particular, whether a fitness to practise model should be introduced; to help simplify arrangements, ensure that only those who are

fit to be permitted to join or remain in the police service, and ensure the public interest is met consistently across all forces. Under such a model the regulator would admit or strike off officers from a register and chief officers would separately have the power to appoint and dismiss officers they employ. In contrast to most professions, these functions are conflated in policing, which we perceive may be at the root of some of the concerns now being articulated.

Terms of reference

1. Understand the consistency of decision-making at both hearings and accelerated hearings – particularly in cases of discrimination, sexual misconduct and violence against women and girls (VAWG).

We are not in a position to comment on the overall consistency of decision-making at misconduct hearings and accelerated hearings. The IOPC is not involved in the majority of hearings and our insight into decision-making at hearings is therefore limited largely to cases in which we have been involved.

However, we are aware that the College of Policing's Guidance on Outcomes in Police Misconduct Proceedings, to which those conducting proceedings must have regard, is not always being applied consistently. Following judicial review proceedings, the courts have found that in some cases there has been a failure by the misconduct panel to adopt the structured approach required by the College's guidance in relation to assessing seriousness and to consider the most appropriate sanction for the officer concerned with reference to the purpose of the police misconduct regime as articulated in that guidance, i.e:

- “1. to maintain public confidence in, and the reputation of, the police service
2. to uphold high standards in policing and to deter misconduct
3. to protect the public”

We are also aware that there may be inconsistency in outcomes for officers and for police staff for the same or similar types of misconduct (obviously matters involving officers and staff are heard in different forums), and in terms of how seriously those conducting proceedings treat some types of misconduct compared with others (for example, discriminatory behaviour that is misogynistic in nature appearing to have been treated less seriously than racial discrimination).

2. Assess whether there is disproportionality in dismissals and, if so, examine the potential causes.

As indicated above, the IOPC is only involved in and sighted on some disciplinary proceedings. We are therefore not in a position to comment on whether there is disproportionality in dismissals overall. However, we agree that this is something the Home Office should assess further. Any disproportionality in dismissals would not only be damaging to individual officers but also to public confidence in the disciplinary system and the police service more widely, with serious implications for the ability of the service to attract and retain a diverse workforce.

3. Establish any trends in the use of sanctions at both hearings and accelerated hearings – in particular the levels of dismissals.

For the reasons already explained, we cannot comment on overall trends in the use of sanctions. However, we can report the following in relation to proceedings that took place in 2021/22 following IOPC independent investigations:

- Misconduct proceedings were held for 127 police officers/staff. 82% (105) of these officers/staff were proven to have breached the standards of professional behaviour:
 - gross misconduct was proven for 75 officers/staff
 - misconduct was proven for 30 officers/staff
 - misconduct was not proven for 22 officers/staff

- In the 75 proceedings where gross misconduct was proven, disciplinary actions imposed were:
 - 45 people were dismissed without notice
 - 12 people retired/resigned before they could receive their sanction
 - 10 people received a final written warning
 - six people received a written warning
 - two people received other actions

Nb. These figures relate to proceedings for police officers and police staff. They include some cases that fell to be dealt with under the Police (Conduct) Regulations 2020 and some that fell under previous legislation. For cases that fell under the 2020 Regulations, the only outcomes available following the finding of gross misconduct would have been final written warning, reduction in rank or dismissal without notice.

4. To review the existing model and composition of misconduct panels, including assessing the impact of the role of legally qualified chairs (LQCs), review whether chiefs should have more authority in the process (including whether the chief should take the decision with protection for the officer provided by way of a right of appeal to the Police Appeals Tribunal and consideration of when barring occurs) and review the legal/financial protections in place for panel members.

As highlighted above, we think the starting point needs to be what problem the review or any reforms are seeking to address. In our view, there were sound reasons for the introduction of independent legally qualified chairs, i.e. to ensure those making important decisions on the most serious misconduct had the appropriate knowledge and skills and were removed from any actual or perceived conflict of interest. This was considered by policing stakeholders and others to be important in securing both public and police officers' confidence in the system and its legitimacy and integrity. It was also considered that it may help to reduce the number of cases that were overturned on appeal.

We do think that it is sensible to review how this has worked in practice, considering whether the policy aims have been achieved (in whole or part) and, if not, why not. As noted earlier, we have had concerns about the decision-making by misconduct panels in some cases. It is to be expected that different parties (including police forces and the IOPC) will sometimes have a different view to that of a panel, especially in cases involving fine balancing of complex evidence. However, we also recognise the possibility that other factors may impact on the outcomes reached at misconduct hearings, including:

- i) The level of training and experience of panel members and legally qualified chairs, and how that compares to legal representatives for officers, who in some cases can be highly experienced King's Counsel.
- ii) That proceedings appear to have become highly adversarial and legalistic in practice, largely adopting the practice of criminal courts where 'defendant rights' sometimes appear to be given more weight than the public interest. This leads, for example, to a failure by panels to consider previous conduct, performance or evidence of 'bad character'. We do not believe that there is a legal impediment to this being considered, but common practice is for it not to be considered. In other cases, highly legalistic tactics appear to have been used to throw procedural errors in the way of evidentially very straight-forward matters.
- iii) Concerns that legally qualified chairs could be held personally liable and sued by officers for decisions that do not go in their favour.

- iv) The quality of evidence presented at the hearing.
- v) Panels/legally qualified chairs not always having due regard to the relevant guidance and judgments, including the College of Policing's Guidance on Outcomes in Police Misconduct Proceedings.
- vi) The highly complex system within which panels are required to operate.

We think that this last point underpins some of the challenges and concerns with the current model. In our view, some of the difficulties derive from the fact that policing is not a regulated profession. Police disciplinary proceedings have their origin in the employer-employee relationship between a constable and their chief officer. However, that relationship has been overlaid incrementally by a statutory regime intended to promote public confidence. As has been noted in various legal judgements, the legislative regime that has resulted is very complicated. See *R (on the application of the Chief Constable of West Yorkshire) v IPCC* [2014] EWCA Civ 1367 [39]... "The Act is a good working example of the horrors of the drafting of modern legislation".

The absence of a professional practise regime for the police means that the responsibilities for identifying and enforcing good conduct are shared by different bodies, including chief officers, Police and Crime Commissioners, the National Police Chiefs' Council, the College of Policing, the Home Office and the IOPC. Panels therefore have to look to the College of Policing's guidance on outcomes, the Home Office's statutory guidance, the Code of Ethics and potentially the IOPC's own statutory guidance. In our view, this results in guidance to disciplinary panels being disparate and confusing. The introduction of the College of Policing's guidance on outcomes was very welcome and we think it is helpful. However, arguably it could be more prescriptive. The Sentencing Council guidelines are an example of more definitive and directive guidelines.

It appears to us that, in the longer term, moving to a regulated profession model could simplify what is currently an extremely complex system and may address chief officers' concerns about being able to manage their own workforce, whilst ensuring that the public interest is represented through fitness to practise tribunals with independent legally qualified chairs. We are mindful that in other regulated professions, the professional body deals with the public interest in fitness to practise issues ('striking off' from the professional register) and employers deal with breaches of the contract of employment (dismissal).

We are conscious that, in the absence of a fitness to practise model, one option that may be considered to address concerns raised about chief officers not being able to dismiss their own officers following a finding of gross misconduct at a misconduct hearing, is for those conducting misconduct hearings (i.e. panels with independent

legally qualified chairs) to retain responsibility for determining whether an officer's conduct amounts to misconduct, gross misconduct or neither, but for chief officers to be given greater say in terms of sanction. For example, with the panel making a recommendation to the chief officer regarding appropriate sanction, but the chief officer having responsibility for determining the sanction.

However, the potential advantages and disadvantages of such a change would need to be given careful consideration, including: risks of any unintended consequences or detriment to the public's or officers' confidence in the system; any implications for the process for officers' inclusion on the police barred list; potential impact on consistency of outcomes at a national level; potential impact on the number of cases that continue to a Police Appeals Tribunal; and likely overall benefit or difference that would be achieved, assuming recourse to an independent Police Appeals Tribunal remained.

5. Ensure that forces are able to effectively use Regulation 13 of the Police Regulations 2003 to dispense with the services of probationary officers who will not become well-conducted police officers.

It is important that forces are able to make fair, effective and timely decisions in respect of the continuing service of officers who are on probation. We are aware that Baroness Casey's recent interim report on misconduct in the Metropolitan Police Service flagged serious concerns that Regulation 13 is not being used fairly or effectively in relation to misconduct, with examples of unacceptable behaviour going unchecked for long periods and disproportionality in the Regulation's use and impact on females and Black, Asian and Minority Ethnic probationers. These interim findings are highly concerning. However, we are unable to provide further insight on how fairly or effectively overall forces are taking action under this Regulation.

6. Review the available appeal mechanisms for both officers and chief constables, where they wish to challenge disciplinary outcomes or sanctions, ensuring that options are timely, fair and represent value for public money.

We recognise the need to have effective mechanisms in place through which parties can challenge decisions made at disciplinary proceedings if they have reason to believe that a decision is flawed and/or due process has not been followed. A more detailed assessment of the operation of Police Appeals Tribunals would be required to determine how accessible and effective this part of the system is in dealing with appeals from police officers and reaching appropriate outcomes. We recognise that under the current model the only challenge available to the employer (i.e. the chief officer) is through judicial review proceedings, which can be costly.

In our view, it is important that appeal processes are timely and transparent, to secure confidence in the system and to avoid prolonging uncertainty for all parties involved. Issues we have outlined earlier, including the complexity of the legislative framework and the adversarial nature of the system, impact on appeals as well as earlier processes.

7. Consider the merits of a presumption for disciplinary action against officers found to have committed a criminal offence whilst serving in the police.

We believe that it is appropriate for there to be a presumption that disciplinary action will be taken where an officer has committed a criminal offence whilst serving in the police and we think that the public would expect this to be the case. This is the position under case law in any event. As the College of Policing's guidance already states, it is unacceptable for police officers, who are responsible for enforcing the law, to break the law themselves and any criminal conviction will be likely to have an adverse impact on public confidence in policing. It may be helpful to issue further, more definitive or directive guidance on outcomes, along the lines of the sentencing guidelines, to assist with consistency of decision-making in this regard.

More widely, we have concerns that in their handling of cases and decision-making, forces are sometimes demonstrating a fundamental misunderstanding of the different purposes of the criminal and disciplinary systems. For example, our joint investigation with the College of Policing and Her Majesty's Inspectorate of Constabulary into the Centre for Women's Justice's super-complaint regarding police-perpetrated domestic abuse (PPDA) found evidence that decisions in criminal investigations and proceedings (which have a different purpose and a different standard of proof) had wrongly impacted on handling and decision-making in respect of complaint and conduct investigations. It found examples of:

- decisions being made to take no further action or consider issues further as part of a misconduct investigation solely based on the decision to take no further action in the criminal case;
- the possibility of addressing PPDA allegations through misconduct procedures being overlooked following the criminal case being discontinued because of issues specific to criminal law (for example, expired statutory time limits which apply to summary only offences such as common assault);
- decisions about severity assessments being delayed inappropriately pending the outcome of the related criminal investigation;
- a decision to lift suspension placing too much emphasis on the decision to take no further action in the criminal case and not considering the remaining risk of prejudice to the misconduct investigation or the public interest; and
- too much emphasis being placed on the criminal standard of proof or the outcome of criminal proceedings (for example, downgrading a severity assessment to misconduct based solely on a not guilty verdict at court and

withdrawing a subject's notice of investigation based solely on a not guilty verdict at court).

The IOPC has also been criticised in the past for pursuing misconduct processes after officers have been acquitted in criminal proceedings, despite the fundamental difference in the purpose of these two processes.

8. Review whether the current three-stage performance system is effective at being able to reasonably dismiss officers who demonstrate a serious inability or failure to perform the duties or their rank or role, including where they have failed to maintain their vetting status.

We are not able to comment on the overall effectiveness of the current three-stage performance procedures. Again, the majority of matters that are dealt with through these procedures will have had no prior IOPC involvement. However, we question whether there could be greater transparency and availability of data in this regard.

Both those who commit misconduct and those who are not able to perform their role in the police service to a sufficient standard (despite receiving appropriate training, guidance and support) can present a risk to the public. It is therefore important that effective systems are in place to address this risk. Different routes for handling performance and misconduct matters were introduced with well-meaning intent, i.e. to encourage an environment focussed on development and improvement rather than one overly focused on blame and punishment. However, the introduction of these additional procedures also added another layer of complexity to the system. If a fitness to practice regime were to be introduced, such a need to distinguish between poor performance and misconduct would fall away to a large degree, with the overarching consideration being whether the individual is fit to remain within the profession and it is in the public interest for them to do so.

The importance of having initial and ongoing vetting for police officers (and all those who work in policing), and taking appropriate action where concerns are identified, cannot be underestimated. It is central to maintaining integrity of the profession and public safety. We are aware that the College of Policing's APP on Vetting (2021) sets out that:

"8.47.2 For police staff, withdrawing RV clearance may lead to dismissal under section 98 of the Employment Rights Act 1996 (ERA). This would ultimately occur when the force decides that alternative employment is not possible and/or the risk cannot be managed.

8.47.3 The ERA does not apply to police officers or special constables. Therefore, when clearance is withdrawn and suitable alternative employment cannot be identified, and/or the risk cannot be reasonably managed, the force

should consider proceedings under the Police (Performance) Regulations 2020.

8.47.4 When a police officer's or special constable's RV clearance is withdrawn, they will be unable to access police information and systems. Unsupervised access to police premises will also not be permitted. As a result, the police officer will be unable to perform their role to a satisfactory level. This could, therefore, amount to gross incompetence and a third-stage meeting should be considered."

However, police forces will be better placed to provide insight into their experiences in this regard.