

**Written evidence submitted by the National Police Chiefs' Council (MAC0050)**

**RESPONSE TO HASC FOLLOWING REQUEST FOR INFORMATION**

1. The 'Understanding Disproportionality in Police Complaint & Misconduct Cases for BAME Police Officers & Staff' report by DCC Phil Cain was welcomed by the PSD Portfolio lead, CC Craig Guildford, who helped facilitate the work. Since the report was produced, primary legislation within the Policing and Crime Act 2017 has been commenced and both secondary legislation and accompanying statutory guidance has changed in early 2020 delivering wholesale reform to the complaints and discipline regime. One of the central aspects of the changes was a move towards reflective practice and learning whereby lower level transgressions and performance matters were dealt with by supervisors rather than being referred in to PSD's for investigation as was historically the case being dealt with by way of disciplinary investigation.

2. Prior to updating on each recommendation, it is important to set out that all NPCC Professional Standards and Ethics portfolios benefit from strong, professional and accessible partnership relationships with the Home Office Police Integrity Unit, Independent Office for Police Conduct (IOPC), College of Policing (CoP), Her Majesty's Inspectorate of Constabulary Fire and Rescue (HMICFRS), the Police Federation of England and Wales (PFEW), Police Superintendents Association (PSA) and the Chief Police Officers Staff Association (CPOSA). This cross-sector partnership, incorporating all professional standards stakeholders, has been responsible for re-designing the regulatory system that underpins the *Improving Police Integrity* reforms. These reforms, commenced on 1<sup>st</sup> February 2020, are fundamental to delivering on many of the recommendations set out below.

**Recommendation 1:** *NPCC to consider working in partnership with Home Office, IOPC, HMICFRS and CoP to develop a common data set to be applied to all forces that enable the capturing of protected characteristic data within PSDs at appropriate points within the misconduct and complaints processes. This will enable the IOPC and CoP to produce periodic reports on performance and impact of disproportionality.*

3. With the implementation of the phase 3 Home Office *Improving Police Integrity* reforms, the Home Office Police Integrity Unit, in consultation with the NPCC and other relevant stakeholders, are reconditioning the annual data return (ADR) requirements for professional standards in order to take account of the overhauled regime. It has been agreed that the new ADR will collect data on the protected characteristics of those touched by the police complaints and discipline system. All principal stakeholders are committed to early adoption of the '18+1' protected characteristic dataset and the National Centurion User Group (NCUG) is leading on its incorporation into PSD Case Management Systems (CMS) with additional mandatory data inputting controls to provide for standardisation across all 43 forces. As of 10/12/2020, the indicative ADR template has been drafted by the Home Office and is now with the NPCC, College of Policing and Independent Office for

Police Conduct (IOPC) for consultation, before it is to be sent to Force Information Services (FIS) who are the supplier of the Centurion CMS used by every PSD in England and Wales.

**Recommendation 2:** *NPCC and HMICFRS to consider developing an inspection question set that measures the progress made against this and previous reports, with the aim of introducing it to the 2021 PEEL inspection framework.*

4. The NPCC Complaints and Misconduct portfolio has networked with the HMICFRS on this issue and whilst the PEEL 2020/21 framework for professional standards has already been set and will focus on counter corruption, the HMICFRS is cognisant of escalating concerns as to alleged BAME disproportionality across wider aspects of operational policing. COVID-19 security permitting, should there be an opportunity for the HMICFRS to conduct a spotlight review in this area of interest, the NPCC Complaints and Misconduct portfolio will seek inclusion of an appropriate question set to examine performance. In monitoring and evaluating the phase 3 *Improving Police Integrity* reforms, all stakeholders are in agreement that the HMICFRS will play a critical role in reviewing whether forces have developed a culture of learning and development for addressing sub-optimal behaviour. This will be a key area of focus within the legitimacy strand of the next, yet to be developed, HMICFRS PEEL inspection programme and the NPCC Complaints and Misconduct portfolio have requested that examination of BAME disproportionality is subject of inquiry.

**Recommendation 3:** *NPCC to consider working with the Home Office and IOPC to incorporate into the misconduct guidance a means to identify and assess 'trigger incidents' and in particular if individuals are subject to any detriment as a result of these.*

5. Over the last circa 24 months, the NPCC Complaints and Misconduct portfolio has worked collaboratively with the Home Office Police Integrity Unit in shaping its ['Statutory Guidance on Professional Standards, Performance and Integrity in Policing.'](#) Improving on previous iterations, this new edition of the statutory guidance now provides direction on the proper handling of grievances and protected disclosures [whistleblowing]. It also provides counsel to delegated appropriate authorities as to the importance of considering all relevant circumstances and the surrounding context to an allegation when undertaking severity assessments and final assessments of conduct. Such deliberations should include scrutiny of any pre-existing incident or ongoing disagreement between parties to an allegation. In particular, decision makers should avail themselves of any ongoing internal processes such as grievances, civil claims and other employment related litigatory organisational knowledge to facilitate comprehensive assessments. Of note, evidence suggests that such knowledge may exist in different parts of a force structure. Such direction has been incorporated within an updated syllabus for the national Heads of PSD and Appropriate Authority training.

**Recommendation 4:** *Support an agreed standardisation of data collection sets within PSDs so that disparity of all backgrounds and protective characteristic can be monitored and performance improved.*

6. The response to this recommendation should be read in conjunction to the NPCC's response to recommendation 1. The NPCC Complaints and Misconduct portfolio has assisted the Home Office in establishing a professional standards cross-sector Monitor and Evaluating sub-group that updates to the multi-disciplinary National Complaints and Misconduct Working Group (NCMWG) in respect of the phase 3 *Improving Police Integrity* reforms. All members of this sub-group have supported the Home Office Police Integrity Unit in developing a new ADR on a range of protected characteristics including ethnicity and gender, in addition to collecting demographics data such as age and rank. The intention is for this data to be published in October 2021 in a standalone document, as opposed to the national Police Workforce Statistics report where misconduct data has been traditionally presented alongside numerous other disconnected data sets. The driver for this approach has been both the ['Understanding disproportionality in police complaint and misconduct cases for BAME police officers'](#) review / report by DCC Cain and the HASC inquiry 'The Macpherson Report: Twenty Years On.'

7. Forces are also developing their own proportionality monitoring regimes across the complaints and disciplinary system. For example, a metropolitan force has a well-established analytical approach to addressing disproportionality in complaint and conduct matters and uses refined data mining techniques to track, present, scrutinise and understand ratios of BAME disproportionality. Another force undertakes a similar exercise within PSD, driven by its force Valuing Difference and Inclusion programme.

**Recommendation 5:** *PSDs to develop a UK wide consistent understanding and application of guidelines based on promising/best practice to understand cultural difference for allegations and counter corruption intelligence. In the interim consideration could be given to heads of PSD ensuring they are sighted and approve severity assessments against those with a protected characteristic.*

8. Many PSDs now routinely engage internal and external networks in providing for a contextual understanding of matters relevant to assessments of alleged misconduct and this approach is encouraged by the NPCC Complaints and Misconduct portfolio. There also exists statutory legislation [Equality Act 2010] and guidance [IOPC Statutory Guidance on the Police Complaints System 2020] underpinning the rigorous approach that must be applied to discriminatory based allegations and hate incidents. Increasingly PSDs have well-established cross-departmental links.

9. As part of the joint NPCC and College of Policing '*Appropriate authority and heads of PSD*' training syllabus, direction is now given as to the importance of PSDs operating within a '*Scheme of Delegation*' insofar as critical decision making is concerned. That training endorses decision makers consulting with senior delegated appropriate authorities, where at face value, a matter is sensitive in its nature. Ultimately the construct of a '*Scheme of Delegation*' is a matter for individual Chief Constables. The NPCC Complaints and Misconduct portfolio through the said training syllabus, encourages decision making relating to officers of a minority protected characteristic to be escalated to a senior manager within PSD. This practice is already commonplace in some force and they are reporting the benefits of this additional rigour. One region is currently formalising a memorandum of understanding whereby a given appropriate authority in one force can approach another regional

force as a 'critical friend' in enhancing consistent and fair decision making and understanding any unconscious bias.

10. All of the above is also be augmented by individual forces considering the levels of representation within the force PSD itself. The NPCC have encouraged Heads of PSD to build greater workforce representation into their PSDs. Furthermore PSDs are now beginning to work collaboratively with specialist advisors, e.g. working with the Black Police Association (BPA) Executive to provide cultural and tactical advice relating to a range of PSD assessments, investigations, counter corruption and vetting matters. Such collaboration is increasing cultural competence.

**Recommendation 6:** *Support the increase in diversity and representation within PSDs through a bespoke positive action programme based on the NPCC Workforce Representation Toolkit. Furthermore, explore the reasons that may hinder or deter those from a BAME background from applying for roles in PSD.*

11. The National Complaints and Misconduct Working Group (NCMWG) has given advice that Heads of PSD should have a focus on increasing diversity within their departments, but recognise that this is a challenge insofar as internal recruitment is concerned with other commands working to an identical objective and drafting from the same finite pool of resources.

**Recommendation 7:** *As part of PSD positive action programmes, PSDs to ensure they have a programme to develop cultural understanding of protected characteristics, including ensuring cognisance is taken of any disparity arising from a failure of supervision to deal with matters at the earliest opportunity and at the lowest suitable level.*

12. See also the response to recommendation 5. A pivotal component of the phase 3 *Improving Police Integrity* reforms (designed collaboratively by the Home Office, NPCC, College of Policing, IOPC, HMCIFRS and staff associations), is the novel regulated and structured reflective practice review process (RPRP) enabling officers to learn from low level wrongdoing or under performance, defined as practice requiring improvement (PRI), through tailored non-sanctionable outcomes. PSDs are now prohibited in law from conducting disciplinary investigations for alleged breaches of the standards of professional behaviour that do not meet the threshold for serious misconduct and any such referral of sub-optimal behaviour erroneously referred must, statutorily, be discharged back to the officer's local supervisor to drive learning and development through RPRP.

13. To realise this new approach, during the latter half of 2019, the CoP assisted by the NPCC, delivered training to both delegated appropriate authorities and PSD practitioners across all 43 forces. A CoP national training package for local supervisors on PRI and RPRP is nearing completion. Once delivered, the NPCC Complaints and Misconduct portfolio will support delegated appropriate authorities commissioning RPRP for a local supervisor where they incorrectly refer low-level wrongdoing or matters of underperformance to the PSD in avoidance of grasping the issue themselves.

This should serve as an effective tool in taking a learning and development approach to those local supervisors who inappropriately refer BAME officers to the PSD.

**Recommendation 8:** *NPCC and IOPC to explore with consideration of current legislation the introduction of a test or mechanism prior to the PSD severity assessment at the case to answer point. That this equitable review is against all circumstances and considers cultural/protective characteristics as well as considering potential trigger incidents that maybe linked to whistleblowing.*

14. The critical decision making points within the police complaints and discipline system i.e. severity assessments and final assessments of conduct, are fixed by relevant primary and secondary legislation. There can be no deviation from the regulated regime otherwise an abuse of process argument would be engaged. Insofar as the final assessment of conduct is concerned, otherwise known as the 'case to answer' test, whilst not defined in statute, it is directed by case law and delegated appropriate authorities must have due regard to the statutory guidance referred to at recommendation 3. It is for these reasons that the NPCC Complaints and Misconduct portfolio is unable accept any recommendation to consider introduction of alternative or additional decision making tests or mechanisms within a regulated regime.

15. The relevant case is law is: Chief Constable of West Yorkshire v IPCC [2014] EWCA Civ 1367), R (on the application of Green) v IPCC [2016] EWHC 2078 (Admin) @ para 12 (a use of force case) and R (on the application of the IPCC Chief Executive) v IPCC [2016] EWHC 2993 (Admin).

**Recommendation 9:** *Consider investment in comprehensive cultural awareness training for all. Consideration can be given to the Metropolitan Police 'Leading for London' programme that works to develop an understanding of localised cultural awareness of communities being served by the force.*

16. The NPCC Complaints and Misconduct portfolio has acknowledged this recommendation and has raised it to the Workforce Coordination Committee (WCC) for their consideration in the first instance, given the recommendation is of a cross-cutting nature.

17. Since the Understanding Disproportionality in Misconduct report was published. In May 2020, DCC Cain took over as the NPCC lead for Workforce Representation and Diversity. The portfolio is developing quickly, with a number of aims and objectives.

These objectives include;

- Support Project Uplift diversity recruitment aims
- Work with CoP to produce a development programme for underrepresented groups for local delivery
- Build on peer reviews and self-assessments to support forces to maximise toolkit based action plans

- Use the NPCC Workforce Representation and Diversity toolkit to base development of retention & progression options
- Support the development of inclusion objectives following results of wellbeing & inclusion survey

18. In conjunction with the DEI lead, Chief Constable Ian Hopkins, a pilot programme of inclusion training is currently being developed with Durham University, as a response to the inclusion survey. This is in addition to the development programme for underrepresented groups mentioned in the above list. A paper is in the process of being prepared for Chief Constable's Council for early 2021 through the DEI committee that seeks support for the work.

19. The pilot considers the collaborative approach developed by Durham University and Durham Constabulary, to improve front-line supervisors' knowledge and skills in leadership and improve wellbeing and inclusion in their work teams. A programme that provides knowledge sharing workshops underpinned by the evidence and theory from research on diversity, equality and inclusion (DEI) conducted in policing at both a national and local force level by the Durham University Policing Research Unit and research partners.

The objectives of the programme are:

- To develop and embed internal capability within forces to successfully deliver knowledge sharing workshops to increase front-line supervisors' knowledge, skill and motivation to improve inclusivity and reduce unacceptable incivility and derogatory behaviour within their work teams.
- To develop and provide effective modular blended learning delivery materials to forces.
- The programme will be independently evaluated to measure impact and outcomes.

**Recommendation 10:** *Consider investment in leadership training with emphasis on complaint and conduct captured within the practice requiring improvement programme being developed through the College of Policing.*

20. See also the response to recommendation 7. In addition to the training already delivered to Heads of PSD, delegated appropriate authorities and PSD investigators, plus the national training package for local supervisors on PRI and RPRP that is nearing delivery, the CoP are building the concept of reflective practice into their service wide leadership programmes to ensure that such an approach to continuous learning is not seen as a tool allied solely with the standards of professional behaviour.

**Recommendation 11:** *Consideration to review the Appropriate Authority training to ensure it captures disproportionality and its impact on severity assessments.*

21. The syllabus for the 'Appropriate authority and heads of PSD' national training course has been extended beyond the issue of protected disclosures to specifically include BAME disproportionality and its impact on severity assessments and final assessments of conduct. Furthermore the CoP and

the NPCC Complaints and Misconduct portfolio now deliver a bi-annual 'PSD Investigator, Supervisor and Hearings Officer' national training course that captures the handling of protected disclosures and victimisation.

**Recommendation 12:** *Utilise the forthcoming results from the national well-being and inclusion survey to support a culture of empowerment to encourage supervisors to take responsibility and deal with complaint and conduct matters at the earliest opportunity.*

22. The new reforms delivered under the phase 3 *Improving Police Integrity* programme having been designed to ensure the complaints and discipline system is proportionate, less adversarial, more timely, with a focus on learning and development. See recommendation 7 - PSDs are now prohibited in law from conducting disciplinary investigations for alleged breaches of the standards of professional behaviour that do not meet the threshold for serious misconduct. If there is a referral of sub-optimal behaviour, there is no other option but to discharge the case back to the officer's local supervisor to drive learning and development through RPRP

**Recommendation 13:** *Utilise the results from the national well-being and inclusion survey to assist with a focus on welfare support for those under investigation, taking into account any specific needs identified through an individual having a protected characteristic.*

23. Some forces have local policies, procedures and / or frameworks in place that provide for guidance and oversight in respect of welfare support offered to officers and staff subject to disciplinary investigations. From activity arising within the NCMWG and having been assisted by the NPCC Complaints and Misconduct portfolio, the CoP is presently working with the PFEW Lead for Conduct and Performance in assessing the various local practices with a view to developing national best practice toolkit.

24. See response to recommendation 9. A national structure is currently being established by DCC Cain for the Workforce Representation and Diversity portfolio. As well as a national board, this also includes a regional structure of Positive Action groups and DEI leads, which has already been successfully piloted in the North-East. The regional groups seek to act as a forum for best practice, information sharing and innovation at a local level. They will use the NPCC Workforce Representation and Diversity Toolkit to drive activity locally, and will focus on attraction, recruitment, progression and retention. This includes matters specific to under-represented groups, including BAME officers and staff.

**Recommendation 14:** *Along with the result of the national well-being and inclusion survey and the findings of this report NPCC to consider developing a series of workshops to identify tactical solutions for service improvements, focusing around culture and confidence connected to understanding the challenges around difference within the workplace.*

25. This recommendation is focussed on wholesale service improvement in both culture and confidence linking to diversity in the workplace. PSDs alone cannot transform workplace culture and

confidence and the NPCC Complaints and Misconduct portfolio has proposed to the WCC that this recommendation should be collaboratively developed by a cross section of relevant NPCC portfolios.

26. As one of the Workforce Representation and Diversity portfolio objectives, as referenced in recommendation 9, DCC Cain has identified the need to develop inclusion objectives following results of Wellbeing & Inclusion surveys. A national board structure is currently being established, which compliments and connects to the other portfolios within the DEI committee. The board seeks to support the portfolio aims comprising of a number of stakeholders including Staff Associations, PAPA and advisory groups. The first meeting board has already been held involving a number of workstream leads.

**Deputy Chief Constable Phil Cain**  
**North Yorkshire Police**

**December 2020**