

Additional written evidence supplied by the National Police Chiefs' Council (NPCC) (MAC0052)

Home Affairs Select Committee (HASC) Inquiry: The Macpherson Report: twenty-one years on

National Police Chiefs' Council (NPCC) Complaints and Misconduct Portfolio's Update on BAME Disproportionality in the Police Misconduct System

1. Introduction

- 1.1 This paper provides a further update to chief constables in respect on the NPCC Complaints and Misconduct portfolio's response to the recommendations of the paper authored by NPCC Race, Religion & Belief – Internal Confidence Lead, Deputy Chief Constable (DCC) Phil Cain, *Understanding Disproportionality in Police Complaint and Misconduct Cases for BAME¹ Police Officers 2019²*, (hereafter termed the Cain Report), which highlighted the existence of significant disproportionality in the assessment of BAME officer conduct in Professional Standards Departments (PSDs).³ The Cain Report found disparity in initial severity assessments applied by PSDs, and further disparity between BAME and white officers where officers were found to have a case to answer for misconduct or gross misconduct.
- 1.2 Whilst the Cain Report highlighted the promising practice of some PSDs who had proactively used the findings of earlier academic research to address disproportionality issues prevalent within their forces, the report drew attention to a general inconsistency of PSD approach to understanding the existence of BAME officer disproportionality and to appreciate cultural and contextual differences in the range of referrals they receive. The report made a total of 14 national level recommendations to address these issues.

2. Background

- 2.1 In response to the Cain Report, the NPCC Complaints and Misconduct lead chief officer, Chief Constable (CC) Craig Guildford, consulted DCC Cain and commissioned further extensive work to better understand the existence or otherwise of any real or perceived BAME officer disproportionality. This focused piece of national research examined PSD data across a more recent 12 month period (1st October 2019 to 30th September 2020) in respect of conduct matters and recordable conduct matters.
- 2.2 The specific aim of this work was to examine the most up to date set of data to enable the service to determine the current reality. Importantly the two chief officers have subsequently carefully reviewed the data within this report, with an experiential focus on allegations, case to answer and outcomes for BAME and white officers. This gives the whole service the very best data upon which to consider the question. In other words, this was a focused end to end analysis based upon the learning from previous reports, anecdotes and perceptions.

¹ Black, Asian and minority ethnic

² Published on the NPCC website, March 2020

<https://www.npcc.police.uk/documents/NPCC%20Understanding%20Disproportionality%20in%20Police%20Complaint%20Misconduct%20Cases%20for%20BAME%20Police%20Officers%20and%20Staff%202019.pdf>

³ The report relied upon data collected by the College of Policing through structured query language (SQL) schema methodology being used to interrogate the case management system used by the 40 PSDs representing all 43 forces. The data was limited to a 3 month period between 01/01/2019 and 31/03/2019.

3. Overview of Key Findings

- 3.1 This research shows at a national level, a BAME officer was 1.39 times more likely to be subject of a conduct related investigation⁴ than a white officer and 1.26 times more likely to be subject of a case to answer determination than a white officer. The summative findings support the Cain Report's finding of disproportionality, yet at a lower proportion. They also demonstrate variation in the levels of disproportionality across the 43 forces of England and Wales, which is important for the service to reflect upon. A higher number of forces than stakeholders expected demonstrated little or no disproportionality whatsoever. It must be underlined that the data is a limited 12 month snapshot, it can fluctuate and that in some forces binary case numbers are in single figures, hence the need for caution.
- 3.2 In terms of disciplinary proceedings,⁵ a BAME officer was 1.6 times more likely to be dismissed than a white officer, and was 1.3 times more likely to receive either a written warning or final written warning. However, a BAME officer was significantly more likely than a white officer to receive one of the lesser, advice-based sanctions, and was 1.6 times more likely to have his or her case not proven at hearing.
- 3.3 The data tends to support a jointly held view by both NPCC portfolio lead chief officers that more BAME officers appear to have had their cases determined at a hearing than appears necessary. Therefore the locus of resolution appears very much aligned with the joint systemic changes we have made i.e. focus upon the probity and proportionality of a case journey rather than the outcome.
- 3.4 These results saw much less disproportionality than anticipated by both NPCC portfolio lead chief officers. Importantly there is a reasonable conclusion from the data which indicates that decision makers have positively responded to the regulatory changes during the past twelve months. However, a similar conclusion can be drawn which indicates that final decision making at the outcome stage of disciplinary proceedings, reflects an inability in earlier parts of the system to deal with lower level matters involving BAME officers at the correct level. Consequently, the key message is one of solid progress whilst maintaining our collective focus on this important subject as the hard work continues.
- 3.5 The definition of misconduct has been changed in secondary legislation. Disciplinary hearings chaired by Legally Qualified Chairs (LQCs) or CCs (or Assistant Commissioner) are reserved for cases where a final written warning is the minimum sanction available if the case is proven at a level of gross misconduct, notwithstanding that an appropriate authority should only send a case to such a hearing if in their assessment they believe dismissal would be justified. The bar for misconduct has been deliberately and proportionately raised. In the overhauled regime, low-level conduct issues not deserved of at least a written warning and defined as Practice Requiring Improvement (PRI), must be addressed by local line management through the regulated Reflective Practice Review Process (RPRP).⁶

⁴ As defined by regulation (r.) 16 Police (Conduct) Regulations 2020 or r. 14 Police (Conduct) Regulations 2012 [conduct investigation]. Or, paragraph 11(2)(c) & 19A(4)(5) of schedule 3 to the Police Reform Act 2002 and regulation 7 Police (Complaints and Misconduct) Regulations 2020 or paragraph 19B of schedule 3 to the Police Reform Act 2002 and r.7 Police (Complaints and Misconduct) Regulations 2012 before commencement of Part 2 Chapter 1 Policing and Crime Act 2017.

⁵ Part 4 or Part 5 Police (Conduct) Regulations 2012 or 2020

- 3.6 Individual force employee ethnicity varies significantly as does the geographic population make up of England and Wales. A minority of forces account for the vast majority of BAME officers across policing. Nationally aggregated data is important, however it can often be heavily skewed towards a small number of forces at various ends of a given analytical spectrum. When looking more granularly at each force in its own context, the data can be even more illuminating.
- 3.7 Of the 43 forces, the data showed that 14 (33%) had no BAME officer disproportionality in either initial assessments or case to answer determinations. In these forces, BAME officers were less likely than white officers to be subject of formal investigation arising from an initial assessment of conduct, or referred to disciplinary proceedings with the final decision maker determining there to be case to answer. In 14 other forces there was some BAME officer disproportionality at *either* an initial assessment of conduct *or* a case to answer determination, but not both. In the remaining 15 forces, there is some evidence of BAME officer disproportionality at both initial assessments of conduct and in case to answer determinations.
- 3.8 Placing this into some context, in one force, the fact that one BAME officer was amongst 40 colleagues subject of an assessment of conduct meant there was marginal disproportionality. In another force, there was one BAME officer in 16 officers subject of a case to answer determination which resulted in similar marginal BAME officer disproportionality.
- 3.9 The data shows that whilst BAME officers were 1.6 times more likely than white officers to have been subject of misconduct proceedings during the 12 month period, there was some consistency in the representation of BAME officers across some misconduct outcomes. The notable exceptions being that BAME officers were slightly less likely to receive a final written warning than white officers, slightly more likely to be dismissed but significantly more likely (four times) to receive management advice or similar than white officers.
- 3.10 Linking the above conclusions with recent and sustained activity across the system, it is important to reflect upon just how service wide actions within the sphere of professional standards have already had a positive impact. Firstly the reforms compel PSD decision makers to discharge matters of low level conduct (PRI) to local line managers, enabling delivery of non-sanctioned learning and support outcomes through the RPRP. This mechanism is now addressing onerous line manager referrals and empowering PSD decision makers to require local supervisors to address a case through reflective practice. Later paragraphs in this report set out just how much activity is taking place in this space.
- 3.11 Secondly, national training for both PSD investigators and those holding appropriate authority responsibilities has had a progressive impact on the objective of achieving proportionality, with course delegates learning the importance constructing rationalised assessments at both the initial assessment and final case to answer decision stages of a disciplinary inquiry.
- 3.12 Thirdly, the bar has been deliberately raised for both the instigation of a disciplinary investigation and the sending of a case to disciplinary proceedings, in order to focus the system on the most serious of cases and dealing with them expeditiously. Furthermore there has been an abundance of support for decision makers stemming from the NPCC National Complaints and Misconduct Working Group (NCMWG) network and local

cultural awareness/unconscious bias training is now widespread. These changes, some of which were enacted in 2020 have already started to reduce the number of cases going through to disciplinary proceedings. It is expected that significantly fewer meetings and hearings should result in cases not being proven against officers across the full spectrum of protected characteristics and that should reduce the disproportionality we have evidenced.

3.13 Furthermore this research positively evidenced the progress made by many senior leaders in PSD to better understand the reasons for any BAME officer disproportionality, and steps taken to prevent and address such disproportionality. The main themes of good and promising practice identified were:

- Focussed PSD training and development;
- Engagement with unsatisfactory performance procedures (UPP)⁷ and reflective practice;
- Use of critical friends and in assessments and case to answer decisions;
- Collaborative working with staff networks and use of specialist advisors;
- Effective force level scrutiny boards;
- Enhanced PSD analysis of disproportionality; and
- Enhanced diversity in PSD workforce representation

3.14 This report is a big progressive step forward despite the data limitations. It has taken some considerable effort to obtain the data from force systems which indicate shortcomings in force level data collection on ethnicity. The Home Office is acutely aware of this and has been working with the NPCC Complaints and Misconduct portfolio to address the gap by revising the Annual Data Requirement (ADR). This will enhance our temporal understanding and facilitate intersectional analysis which encompasses more than just ethnicity. The report only relates to police officers, not police staff. This will be developed further in the year. Progress has been made, however much more focus is required in this discreet area but it needs to be emphasised.

3.15 Unlike the legislated framework governing the disciplinary regime for police officers, the conduct system for police staff has been historically, disparate across forces, given the regime has been mandated by individual force policies and procedures, commonly owned by Human Resource (HR) departments. Significant progress on this particular pervasive issue has been made over the course of the last 12 months and on 13th November 2020, the Police Staff Council (PSC) reached an agreement to publish the PSC Handbook '*Part 3 Revised Guidance on Police Staff Misconduct Procedures.*' This comprehensive guidance enables forces who have adopted the handbook to consider emulating the principal procedures and thresholds enshrined by the PCR 2020 into their misconduct procedures for police staff. Furthermore, since the aforementioned date of publication of the revised guidance, both the Home Office Police Integrity Unit (PIU) and the NPCC Complaints and Misconduct portfolio have made submissions to the PSC⁸ in an effort to achieve even greater alignment of the police officer and police staff disciplinary regimes, given several nuanced variations continue to endure.

4. Methodology

⁷ Police (Performance) Regulations 2020

⁸ Submissions have been made to the issuing representatives from both Unison and the Local Government association.

- 4.1 The NPCC Complaints and Misconduct lead chief officer, CC Craig Guildford, consulted DCC Cain and responded to the Cain Report's 14 recommendations in September 2020⁹, noting that recent, wider reforms to the police disciplinary regime¹⁰ provide an impetus for improved fairness and balance. Further research was commissioned with Heads of PSD¹¹ across England and Wales to determine the extent to which BAME officer disproportionality in misconduct assessments and proceedings was currently evident, given the heightened awareness of, and scrutiny by, senior PSD leaders over these issues.
- 4.2 To assist the NCMWG and Heads of PSD to better understand the existence or otherwise of any real or perceived BAME officer disproportionality, this present research examined the data held by PSDs across a more recent 12 month period (1st October 2019 to 30th September 2020) in respect of conduct matters and recordable conduct matters. Analysis of BAME officer representation at initial assessments of conduct, final assessments of conduct, and outcome of any ensuing disciplinary proceedings were chosen deliberately. The aim was to provide a more definitive picture of the extent of any such disproportionality across forces in England and Wales, thus helping inform the narrative on how forces are dealing with any such identified disparities.
- 4.3 The Cain Report acknowledged the main concerns about the validity of its own research underpinning its recommendations as the limitations of its data (across 3 months in early 2019), as well as the significance of the lack of officer ethnicity in the data sets themselves. Both of which serve only to highlight that any meaningful observations drawn from this research should be treated with care.
- 4.4 The Cain Report identified BAME officer disproportionality in initial assessments of conduct based on *allegations* faced by officers. This methodology inadvertently diminished the validity of the data relied upon, as a complaint case, (and, to a much lesser extent, a conduct case), can give rise to one or more individual allegations. Notwithstanding the good work of the Independent Office for Police Conduct (IOPC), the NPCC and of many PSDs at trying to improve greater consistency in raising allegations from cases, there remains much subjectivity of approach. IOPC complaint statistics for 2019/20¹² highlight the challenges in drawing meaningful data from allegations alone. In that year, 243 complaint allegations per 1,000 employees across all forces were recorded. Allegation rates across police forces ranged from 62 to 493 per 1,000 employees.
- 4.5 Open source data from the IOPC over recent years tends to show there to be little or no significant disproportionality evident in the ethnicity of officers complained about by the public. This is a professional view shared by both NPCC chief officer leads. Furthermore, and crucially, the Cain Report (together with some shared and unreported commentary from certain participants) highlighted the concerns reported by some BAME officers about their adverse experiences in referral to misconduct proceedings. Much of the feedback was understandably focussed upon *internally raised allegations*,

⁹ NPCC Complaints and Misconduct Working Group report to NPCC Workforce Coordination Committee, September 2020

¹⁰ As provided by the Police (Conduct) Regulations 2020, the Police (Complaints and Misconduct) Regulations 2020 and amendments to Schedule 3, Police Reform Act 2002, brought about by the Policing and Crime Act 2017.

¹¹ CC Guildford letter to Heads of PSD, Data request: BAME Officers subject of misconduct assessments and misconduct proceedings, September 2020

¹² published in November 2020 and readily found on the IOPC website

https://policeconduct.gov.uk/sites/default/files/Documents/statistics/complaints_statistics_2019_20.pdf

particularly those over-escalated to PSD by supervisory officers, and who appeared reluctant to deal with relatively low level instances of breaches of standards of professional behaviour by BAME officers. Hence, this follow-up research focused solely on the proportionality of BAME officer assessments of conduct that:

- (i) amounted to *recordable conduct* and which were assessed in accordance with schedule 3 to the Police Reform Act (PRA) 2002; and
- (ii) those which amount to *conduct matters* subject of assessment under PCR 2012/2020

4.6 Data from case to answer decisions across the same period was also sought to determine the extent of any appropriate authority based disproportionality of BAME officers in the determination of a case to answer following an investigation¹³ into either misconduct or gross misconduct.

4.7 Further data was requested to determine the prevalence of any BAME officer disproportionality evident in the outcomes of any disciplinary proceedings (i.e. misconduct meetings, or misconduct hearings under Parts 4 and 5 of the PCR 2012/2020) during the same 12 month period. This was deemed an important area of focus due to the temporal lag of cases coming to hearings. It also enabled a fuller systemic understanding to be gained and shared from a learning perspective too.

4.8 Finally, Heads of PSDs were asked to provide details of any local practice or initiative in place to address BAME officer disproportionality in misconduct matters and to promote wider confidence in PSDs. The Cain Report had helpfully identified some promising practices developed by the PSDs of the Metropolitan Police Service (MPS), West Midlands Police, Greater Manchester Police, West Yorkshire Police and Lancashire Constabulary to counter and address BAME officer disproportionality where and when it becomes evident in PSD matters. It will be highly beneficial for the NCMWG to take stock of all current work in progress by PSDs to consider the efficacy of their own governance, and any monitoring and scrutiny arrangements to address, or guard against, BAME officer disproportionality, including steps taken to promote understanding of cultural differences within the wider workforce.

5. Research Findings

5.1 As of 31st March 2020, BAME officers represented 7.3% of all officers who stated their ethnicity, a modest increase from 6.9% reported in the previous year.^{14,15} Table 1 shows that across the 43 forces, a total of 3840 officers were subject of an investigation into either misconduct or gross misconduct following an initial assessment of conduct. Of these, 413 officers self-declared as BAME. Nationally 10.76% of officers subject of investigation over the 12 month period were of BAME origin.

5.2 A total of 1259 officers were subject of a case to answer determination during the same period. Of these, 122 officers (9.69%) were of BAME origin.

¹³ Including investigations pursuant to both the Police (Complaint and Misconduct) Regulations 2012/2020 and the Police (Conduct) Regulations 2012/2020

¹⁴ Police Workforce Statistics, England and Wales, as at 31 March 2020, Home Office 2020, <https://www.gov.uk/government/statistics/police-workforce-england-and-wales-31-march-2020>

¹⁵ Unpublished NPCC data shows an increase in the representation of BAME officers to have risen to 7.5% at the time of publication

- 5.3 This data shows some BAME officer disproportionality in initial assessments of conduct, and, to a lesser extent, case to answer determinations when considering the overall nationally aggregated officer headcount. Using Home Office police officer ethnicity data for the period in question (across 2019 and 2020), at a national level, a BAME officer is 1.39 times more likely to be subject of investigation than a white officer¹⁶, and is 1.26 times more likely to be subject of a case to answer determination resulting in disciplinary proceedings than a white officer.
- 5.4 As individual force workforce ethnic diversity varies hugely (as does the population make up in force geographies), a minority of forces account for the vast majority of BAME officers. A key implication is that discussions of police ethnic diversity at a national level can often be skewed towards a small number of forces.¹⁷
- 5.5 When looking more granularly at each force in its own context, the data shows unsurprisingly variance. Of the 43 forces, that data showed (14%) showed no BAME officer disproportionality. In these forces, BAME officers were less likely than white officers to be subject of either an initial assessment of conduct where a disciplinary investigation was instigated or a case to answer determination where an allegation was referred to disciplinary proceedings.
- 5.6 In 14 forces, there was some BAME officer disproportionality at either an initial assessment of conduct or a case to answer determination, but not both. In some forces, e.g. Cheshire, the fact that one BAME officer was amongst 40 subject of an assessment of conduct resulted in marginal disproportionality. Similarly, in Suffolk, that there was one BAME officer in 16 officers subject of a case to answer determination resulting in marginal BAME officer disproportionality. This highlights the oft-quoted concern that small sample sizes make comparisons statistically problematic and unreliable, as only a small increment in population can have a disproportionate impact on the outcome.
- 5.7 In the remaining 15 forces, there was some evidence of BAME officer disproportionality at both initial assessments of conduct and in case to answer determinations. Again in some forces (e.g. Derbyshire, Merseyside), this is accounted for by virtue of one BAME officer being subject of a case to answer decision. In South Wales, the fact that 2 BAME officers (3.92%) over a 12 month period were subject of an initial assessment of conduct where disciplinary investigations were instigated out of a total of 51 such assessments resulted in disproportionality when compared to the percentage of BAME officers in that force (2.56%).

Report continues on the page overleaf

¹⁶ The ratio is calculated by the number of BAME officer assessments divided by the number of white officer assessments, multiplied by the number of white officers divided by the number of BAME officers

¹⁷ A Diversity Uplift? The Police Foundation (2020) http://www.police-foundation.org.uk/2017/wp-content/uploads/2010/10/perspectives_workforce_diversity.pdf

Table 1: Frequency and percentage of BAME officer in assessments of conduct and case to answer determinations between 01 October 2019 and 30 September 2020.

Key: Under-representations of BAME officers Over-representations of BAME officers

Force	% BAME officers in force	Total officers subject of investigation	BAME officer subject of investigation	% BAME officer subject of investigation	Total case to answer	BAME officer case to answer	% BAME officer case to answer
Avon and Somerset	3.36	32	1	3.13	4	0	0.00
Bedfordshire	10.00	52	9	17.31	28	5	17.86
Cambridgeshire	4.70	73	7	9.59	21	1	4.76
Cheshire	1.95	40	1	2.50	9	0	0.00
City of London	7.60	4	2	50.00	0	0	0.00
Cleveland	2.30	52	0	0.00	5	0	0.00
Cumbria	0.96	25	0	0.00	7	0	0.00
Derbyshire	3.60	116	6	5.17	18	1	5.56
Devon and Cornwall	1.30	106	1	0.94	34	0	0.00
Dorset	1.70	55	0	0.00	33	0	0.00
Durham	1.71	15	0	0.00	2	0	0.00
Dyfed-Powys	0.77	25	0	0.00	11	0	0.00
Essex	3.42	85	7	8.24	3	0	0.00
Gloucestershire	2.70	22	0	0.00	15	0	0.00
Greater Manchester	8.93	202	25	12.38	44	7	15.91
Gwent	2.29	16	0	0.00	2	0	0.00
Hampshire	3.15	84	4	4.76	6	0	0.00
Hertfordshire	5.00	65	8	12.31	26	1	3.85
Humberside	1.80	230	2	0.87	24	1	4.17
Kent	3.53	98	4	4.08	84	5	5.95
Lancashire	4.58	52	7	13.46	16	2	12.50
Leicestershire	7.96	153	11	7.19	7	0	0.00
Lincolnshire	2.11	45	4	8.89	26	2	7.69
Merseyside	3.49	76	4	5.26	15	1	6.67
Metropolitan Police	15.00	812	205	25.25	344	65	18.90
Norfolk	2.25	24	0	0.00	16	0	0.00
North Wales	1.12	22	0	0.00	7	0	0.00
North Yorkshire	2.40	93	5	5.38	58	0	0.00
Northamptonshire	4.00	94	9	9.57	18	3	16.67
Northumbria	2.40	89	5	5.62	41	1	2.44
Nottinghamshire	6.40	33	2	6.06	16	0	0.00
South Wales	2.56	51	2	3.92	56	2	3.57
South Yorkshire	5.00	53	5	9.43	35	6	17.14
Staffordshire	3.03	30	2	6.67	8	0	0.00
Suffolk	3.15	22	0	0.00	16	1	6.25
Surrey	4.80	67	6	8.96	12	2	16.67
Sussex	3.00	56	3	5.36	15	0	0.00
Thames Valley	6.00	235	15	6.38	64	3	4.69
Warwickshire	5.20	27	1	3.70	6	0	0.00
West Mercia	2.50	34	2	5.88	7	0	0.00
West Midlands	11.70	193	33	17.10	52	2	3.85
West Yorkshire	6.30	161	13	8.07	43	11	25.58
Wiltshire	2.00	21	2	9.52	5	0	0.00
Total		3840	413	10.76	1259	122	9.69

- 5.8 As set out in the Home Office workforce statistics¹⁸, of the 43 forces, the MPS has the highest proportion of BAME police officers, with 15% of officers identifying themselves as such but still well below the proportion of BAME people resident in the Capital (40%). The second highest proportion of BAME officers is in West Midlands Police, where some 12% of officers identify themselves as BAME (compared with 30% of the local population). In Bedfordshire Police, 10% of police officers identify as BAME (compared with 23% of the local population). Police forces covering more rural areas (such as North Wales Police and Cumbria Constabulary) have the smallest proportion of BAME officers (around 1%), reflecting their comparatively small BAME populations.
- 5.9 Table 2 shows the outcomes of disciplinary proceedings taking place in the 12 month period. However the majority of officers appearing in disciplinary proceedings in that period will have been subject of initial assessment, disciplinary investigation, and a case to answer determination in the 12 months prior to the start of the 1st October 2019 to 30th September 2020 reporting period (and in some cases, a longer preceding period). In other words, their appearance at disciplinary proceedings will have been as a result of their exposure to the police disciplinary investigative regime before its reform and the commencement of the new system for all cases coming to the attention of the force on or after 1st February 2020. Table 2 data extract is NOT the result of the cases reported in Table 1 above.
- 5.10 This is an informative table as it shows some disproportionality of BAME officers subject of disciplinary proceedings (12.53%) against the national proportion of BAME officers (7.30%). The data contained within it shows BAME officers were 1.6 times more likely than white officers to have been subject of disciplinary proceedings during the reporting period.
- 5.11 Encouragingly, the proportion of case to answer determinations instigating disciplinary proceedings where the officer was BAME in that same temporal period (1st October 2019 to 30th September 2020) had reduced to 9.69%. This is reflective of the systemic changes in 2019 in preparation for legislative changes in February 2020.

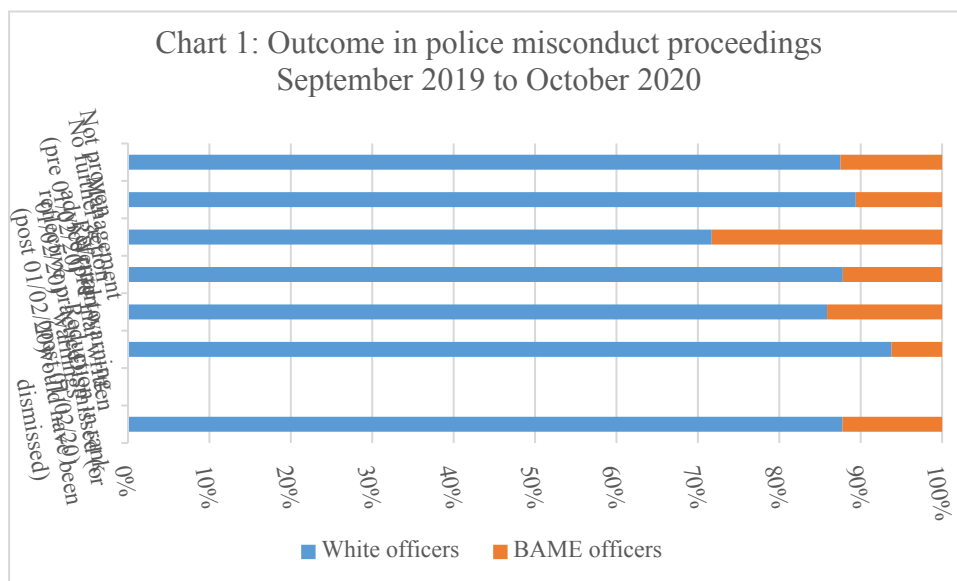
Table 2: Outcomes in misconduct proceedings (meetings and hearings) between 01 October 2019 and 30 September 2020

Outcome	All officers	BAME officers	% BAME
Dismissed (or would have been dismissed)	253	31	12.25
Reduction in rank (<i>post</i> 01/02/20)	0	0	0.00
Final written warnings	145	9	6.21
Written warning	184	26	14.13
Referral to reflective practice (<i>post</i> 01/02/20)	41	5	12.20
Management advice (<i>pre</i> 01/02/20)	53	15	28.30
No further action (<i>pre</i> 01/02/20)	66	7	10.61
Not proven	104	13	12.50
Totals	846	106	12.53

¹⁸ ibid

5.12 The data from this period shows there to be some consistency in the representation of BAME officers across the majority of misconduct outcomes. However when combined, the two categories of Management Advice and referral to the RPRP showed a clear over representation of BAME officers. These outcomes are very clearly different and deliberately less punitive than those sanctions available for the new definition of misconduct.

5.13 Neither chief officer for two aforementioned NPCC portfolios, nor any individual compiling the report from the National PSD Portfolio, believe this finding to be reflective of weak, inadequate, conscious or unconscious bias related Panel decision making, but it could show an erring in the case to answer determination. Chart 1 below underlines the data.



5.14 Table 3 shows the likelihood¹⁹ of a BAME officer being subject of (i) one of the disciplinary outcome categories, (ii) the non-sanctionable outcome of RPRP, (iii) no further action and (iv) not proven. The data demonstrates that during the reporting period BAME officers were 1.60 times more likely to be dismissed than white officers. Both chief officers have confidence in the appropriateness of those case outcomes.

5.15 However as per paragraph 5.13 above, the most significant finding relates to BAME officers being over-represented (compared with the proportion of BAME officers nationally) in all of the less punitive outcome categories including cases being 'not proven.' This finding, on a binary level of analysis, reflects a jointly held NPCC portfolio chief officer professional opinion that historically, arguably too many of the cases involving BAME officers have been entering disciplinary proceedings only to be concluded with outcomes lesser than written warnings.

5.16 The new statutory instruments driving legislative change that were laid before Parliament on 10th January 2020 and commenced on 1st February 2020 were very specifically and deliberately formulated to address this issue as part of a wider cultural shift required across the sector. A sample of the key changes :-

¹⁹ Each ratio is calculated by the number of BAME officers divided by the number of white officers in each category, multiplied by the number of total white officers divided by the number of BAME officers

- Definition of misconduct changed in secondary legislation;
- Case to answer test broadened by statutory guidance, with the inclusion of the public interest decision whether to bring disciplinary proceedings;
- Regulated reflective practice delivering non-sanctionable outcomes to address low-level misconduct and underperformance collectively designated PRI;
- National joint NPCC and College of Policing training courses for both (i) Heads of PSD and appropriate authorities (including delegates) and (ii) PSD investigators and supervisors;
- Joint letter of intent regarding 'learning' from IOPC, NPCC and staff associations; and
- Greater transparency in initial (severity) assessments, decision making and scrutiny / oversight in respect of timelines.

Table 3: Comparative outcomes in misconduct proceedings between 01 October 2019 and 30 September 2020

Category of outcome	All officers	BAME officers	%age BAME	BAME to White officer likelihood
Dismissed (or would have been dismissed)	253	31	12.25	1.60
Final written warning / Written warning	329	35	10.64	1.39
M. Advice / Reflective practice / No further action	160	27	16.88	2.21
Not proven	104	13	12.50	1.64

6. Good and Promising Practice in Addressing Disproportionality

6.1 A total of 11 forces²⁰ provided detailed insight into work already established or currently in progress in their PSDs to address BAME officer disproportionality in misconduct matters and to promote wider BAME officer and staff network confidence in PSD. From these submissions, it is evident there are significant efforts being made by many senior leaders in PSD to understand the reasons for any BAME officer disproportionality, and to take steps to prevent, mitigate, and address such disproportionality. That good practice needs to be emulated across all forces. Set out below are the main themes of recognised good and promising practice that deal specifically with addressing concerns of disproportionality. There is more to do across policing to implement new positive practices to address disproportionality.

Force level scrutiny boards

6.2 Some forces²¹ benefit from well-established PSD Scrutiny Panels or Disproportionality Working Groups chaired by senior leaders and which deal exclusively with matters such as preventing discrimination and promoting a fair and equitable culture. Such panels include representatives from PSD and HR, representatives of various different support

²⁰ Bedfordshire, Cambridgeshire, Greater Manchester, Hertfordshire, Lancashire, Leicestershire, Lincolnshire, Northumbria, Staffordshire, West Midlands, and West Yorkshire

²¹ Bedfordshire, Cambridgeshire & Hertfordshire [collaborated PSD] and Greater Manchester

groups, networks for BAME officers and staff as well as external advisors in diversity matters. Routine business includes the monitoring of:

- data and themes in public complaints of discriminatory behaviour;
- data and themes in internal conduct cases involving breaches of the standard of equality & diversity;
- data in relation to disproportionality of conduct matters recorded against BAME subject officers and staff;
- data in relation to disproportionality of outcomes for BAME subject officers and staff in finalised conduct cases;
- anonymised investigation documents in relation to all of the above for the panel members to offer commentary on investigative standards and PSD/HR decision-making; and
- anonymised paperwork in relation to vetting decisions for BAME applicants for the panel members to offer commentary on decision-making.

6.3 Reported benefits of such an approach include:

- the development of more in-depth work to review conduct cases involving BAME officers and staff to identify any factors which may be contributing to disproportionate referrals of BAME individuals;
- PSD decision making in assessments and investigations is informed by consult support group/network representatives to better understand cultural or organisational issues which may have contributed to the matter in question.

Enhanced analysis of disproportionality

6.4 West Midlands Police PSD 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 officer and staff, and complainant disproportionality.

6.5 Lancashire PSD is an integral part of the force's Valuing Difference & Inclusion (VDI); the PSD is involved across all VDI workstreams, and has developed a "Proportionality Dashboard" which provides information regarding misconduct subjects, outcomes, formal sanctions and UPP subjects, broken down by ethnicity.

Collaborative working and specialist advisors

6.6 Lancashire's Head of PSD has worked collaboratively with the Black Police Association Executive to secure funding for a permanent budgeted position to act as a PSD Advisor to promote understanding of the extent of any BAME officer and staff disproportionality within Lancashire's PSD and wider constabulary. Following a competitive internal recruitment process, a member of staff was appointed in October 2020. This advisor provides 'cultural tactical advice' relating to a range of PSD assessments, investigations, and vetting & counter corruption matters, assists to develop the cultural competence of the department, (and of the wider force) and works with key internal and external stakeholders to devise and implement strategies to reduce or mitigate against such disproportionality, real or perceived.

6.7 Leicestershire and Lincolnshire PSDs also highlight the real benefits from developing and maintaining good relationships with wider force departments and staff support networks in particular including the use of their members as advisors for relevant misconduct matters in order to enhance PSD thinking, understanding and interpreting of cultural behaviours. This positive relationship and engagement has helped PSDs improve confidence with BAME colleagues. West Yorkshire Police PSD provide further evidence of the importance of a consultative approach with senior leaders of staff networks, including holding honest conversations with these networks where matters have not worked well, and steps that need to be taken to promote and enhance diversity and inclusion, including Positive Action.

Enhanced workforce representation

6.8 One of the issues highlighted in the Cain Report was the relative sparsity of BAME officer and staff representation in PSDs. Both Leicestershire and Lancashire PSDs report the benefits of increased workforce representation in their respective departments. West Yorkshire Police PSD articulate the significant advantages of enhanced levels of BAME officer representation at investigator and decision maker levels in its PSD, and the positive impact on the promotion of wider cultural understanding within PSD and making the department 'culturally competent.'

Engagement with unsatisfactory performance and reflective practice

6.9 Lincolnshire PSD highlights the benefits of a training programme to encourage all supervisors to deal with matters at the earliest opportunity and at the lowest suitable level a training programme.

Critical friends and peer review: severity assessments and case to answer

6.10 Several forces report the benefits of escalation of initial and final assessments of conduct where officers and staff subject of investigation are of BAME origin or have other protected characteristics to provide assurance of rigour and consistency in decision making, and to determine the existence of, and any impact, of any relevant HR process or grievance to the case in question. PSDs comprising the East Midlands region are formalising a local memorandum of understanding whereby the appropriate authority can approach a regional force as a 'critical friend' to talk through initial and final assessments in an attempt to promote consistent and fair decision making, and to understand any unconscious bias.

Training and development

6.11 Several forces report the provision of enhanced cultural awareness training for PSD staff. In particular, West Yorkshire PSD has worked with minority staff networks to provide all PSD staff with faith bias awareness training.

7. Update on Cain Report Recommendations

7.1 The final section of the report provides a brief update on the action to progress the five Cain Report recommendations which are of relevance to PSDs.

7.2 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.

Update: Liaison with key stakeholders Home Office Police PIU, the College of Policing, IOPC, and Her Majesty Inspectorate of Constabulary Fire and Rescue Service (HMICFRS) has already taken place. With the implementation of the 2020 reforms to the regulatory procedures, the PIU is reconditioning the ADR for professional standards in order to take account of the overhauled regime. The new ADR will collect data on the protected characteristics of those touched by the conduct and discipline system. The Home Office ADR will only collect officer/staff characteristics. The intention is that this data will be published in October 2021 in a standalone document that will allow for intersectional analysis, as opposed to the national Police Workforce Statistics report where misconduct has been traditionally presented alongside numerous other disconnected data sets. The IOPC's ADR collects complainant data. 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 with additional mandatory data inputting controls to provide for standardisation across all 43 forces.

7.3 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.

Update: The NCMWG has promoted the application of identified promising practice from PSDs across England & Wales in the understanding of cultural difference in referrals and intelligence received. As evidenced by this recent research, PSDs routinely engage in internal and external networks dealing with diversity, equality and inclusion. There already exists a sufficiency of relevant statute and guidance²² underpinning the importance of robust and rigorous approaches to discriminatory-based allegations and hate related incidents. Increasingly, PSDs have well-established cross-departmental links with human resources and legal services to establish understanding and promote knowledge of relevant grievance and litigated cases.

National appropriate authority training includes guidance on *Schemes of Delegation*. Where a decision which would ordinarily fall to a delegated officer appears to him or her to be controversial or particularly sensitive in nature, or it is otherwise appropriate for the decision to involve a more senior manager, or where a force has a concern over the prevalence of any real or perceived disproportionality due to a protected characteristic, some force *Schemes of Delegation* already allow for consultation in decision making in severity assessments, including where matters ought to be escalated. For example, one force which identified a local concern over discrimination ensured its *Scheme of Delegation* reflected that a senior officer be involved in any consultation prior to a determination being made.

7.4 Recommendation 6: Support the increase in diversity and representation within PSDs through a bespoke positive action programme based on the NPCC Workforce

²² Including the provisions of the Equality Act 2010, the [College of Policing's Code of Ethics \(2014\)](#), [IPCC Guidelines for Handling of Allegations of Discrimination \(2015\)](#), and the [IOPC Statutory Guidance on the Complaints System](#).

Representation Toolkit. Furthermore, explore the reasons that may hinder or deter those from a BAME background from applying for roles in PSD.

Update: The evidence from this research serves to underpin the work of an increasing number of senior PSD leaders to adopt positive action plans, including elements such as succession planning, profiling, and short-term developmental opportunities. The NCMWG notes however that many force specialist units are undertaking identical approaches to improving diversity and representation, and appreciates the challenges of successful improving rates of significant under-representation of diverse groups within PSDs given recruitment from the same finite pool of resources.

- 7.5 **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.

Update: This research evidences the impact of an increased focus by senior PSD leaders to promote awareness of cultural differences, including positive and regular engagement with staff networks. The NCMWG is heavily committed to promoting the principles of PRI and the RPRP, designed to ensure first line supervisors engage with low-level matters with learning and development of their staff a clear focus, rather than unnecessary or disproportionate escalation to PSDs. A cross professional standards sector working party to the NCMWG has been established to determine the early impact these recent reforms, including the extent of supervisory use and understanding of these reforms.

- 7.6 **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.

Update: The NPCC and College of Policing training for appropriate authorities and Heads of PSD emphasises the importance of those conducting case to answer determinations to take into account *all relevant circumstances*. As with an initial assessment of conduct, an appropriate authority is perfectly capable of identifying, and taking into account, any relevant matters relating to culpability, harm, aggravating and mitigating factors, and must also determine, if the sufficiency of evidence test is met, whether disciplinary proceedings should be brought against that person. This recent change to guidance (February 2020), provides the appropriate authority with sufficient latitude to consider all relevant matters as to the appropriateness of bringing disciplinary proceedings, and at that stage, any relevant matter relating to cultural or protective characteristics of an officer subject of the allegation can be considered, as can any potential trigger incidents that may be linked to whistleblowing. There can, however, be no deviation from the regulated regime in cases of either cultural or protected characteristics, and appropriate authorities must pay due regard to the regulatory regime, its supporting guidance, and relevant case law in case to answer determinations.

Craig Guildford

Chief Constable

NPCC Complaints and Misconduct Portfolio

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