

Equality and Human Rights Commission

Section 20

investigation

into the

Metropolitan

Police Service

## Foreword by Lead Commissioner – Laura Carstensen

Serving in the police force is a complex and difficult job. We look to our police, with their unique powers, to maintain law and order, protect us and our property and prevent, detect and investigate crime. The way individuals within the police service treat each other as managers and colleagues is indivisible from their ability to fulfil their unique role and has a significant impact on public confidence. For as long as inquiries, reviews and employment tribunals continue to make findings about unfair treatment and discrimination within police forces, it is a challenge for the public to believe they will be treated fairly in their dealings with the police. It is therefore right that there should be a robust police conduct regime to tackle unacceptable behaviour including unlawful workforce discrimination.

Complaints of discrimination can be made against any employer. How employers deal with these complaints and how they learn from them is vitally important.

The Howard Employment Tribunal (ET) remedy judgment in September 2014<sup>1</sup> raised significant concerns about how the Metropolitan Police Service (the MPS) treats their staff and officers when they make a complaint about discrimination, including under the MPS internal grievance procedure known as the Fairness at Work (FAW) procedure. This judgment recommended that there should be an independent review of the MPS's FAW procedures.

The MPS wants to increase the diversity of its workforce to reflect the communities it serves. London has a diverse population and therefore the MPS needs to attract and retain a diverse workforce.

Increasing confidence in the police service is also a key target set for the MPS by the Mayor's Office for Police and Crime (MOPAC).

Our investigation reveals weaknesses in how the MPS handles internal complaints, and this has been reflected in recent ET judgments in discrimination cases.<sup>2</sup>

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<sup>1</sup> *Howard v The Commissioner of the Police of the Metropolis*, 1 September 2014.

<sup>2</sup> The cases of PC Daniel Lichters in May 2015, PC Carol Howard in June 2014 and DC Kevin Maxwell in February 2012.

A willingness to be held to account and to apologise is crucial to any organisation and particularly to an essential and powerful public service such as the police. Our investigation raised concerns that the MPS do not demonstrate this behaviour in relation to their handling of internal complaints. Many of the individuals we spoke to said that their initially simple complaints could have been resolved quickly and effectively with an apology and an acceptance that things went wrong. However the complex regulatory framework alongside police culture and the MPS's history in terms of race issues mean that this rarely happens. Instead the focus has too often been on apportioning blame and issuing sanctions.

This report makes recommendations to the Home Office to improve the regulatory framework. It also looks at how the MPS can tackle its own performance and, perhaps most importantly, culture so as to better handle complaints of discrimination in future.

I would like to thank the MPS for their co-operation with this investigation, and give particular thanks to those individuals that we interviewed who were prepared to share with us difficult episodes that they have experienced at points in their careers with the MPS.

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# Executive summary

## Background

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The findings of the Howard ET in 2014 raised serious concerns for the Commission not just because of the discrimination that Ms Howard had faced but also because of the way that she had been treated by the MPS after she had complained about discrimination. The remedy judgment recommended that there should be an independent review of the MPS's FAW procedures. On 22 September 2014 the Commission wrote to the MPS informing them of our decision to use our statutory powers to conduct a formal investigation. As the statutory equality body the Commission has unique powers to make unlawful act findings, where we find a breach of equality legislation. In December 2014 the MPS engaged the services of the Advisory, Conciliation and Arbitration Service (Acas) to conduct an independent review and informed both the ET and Ms Howard's legal representative of this decision.

## Scope

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Our investigation sought to consider whether or not systemic unlawful acts had occurred in the treatment of complaints from police officers and staff of gender, race or sexual orientation discrimination. Complaints relating to other protected characteristics such as age or disability were not considered. We only considered complaints from staff and officers and not complaints made by the public. Unlike an ET, which considers individual cases, our investigation examined policies, procedures and practice across the MPS. The investigation did not examine whether or not the initial acts being complained about were unlawful.

## **Methodology**

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We considered a wide body of evidence that included documents regarding individual cases provided to us by the MPS, interviews with individuals, formal oral evidence sessions, relevant reports from other organisations, statistical analysis of MPS data, the MPS's Standard Operating Procedures (SOPs) , roundtable discussions with stakeholders and workshops with MPS. We used our powers in a full and appropriate way to ensure that we received the evidence we required. We are satisfied that the MPS co-operated fully and complied with our many requests for information.

## **Regulatory framework**

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We found a complex and confusing interaction between the different parts of the statutory regime that governs police officer conduct. Different organisations with responsibilities under the legislation interpret it in different ways.

The MPS's interpretation of the legislation led to a policy that required all complaints of discrimination to be escalated for consideration of misconduct by the alleged discriminator. This puts individuals making discrimination complaints at a disadvantage because they do not get an opportunity to have their cases resolved as a grievance, where the focus would be on resolution rather than apportioning blame and sanctions. This lack of clarity as to the meaning of the legislation leaves police forces at risk of legal challenge.

## **How the MPS handled complaints of discrimination**

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Following our interviews and case analysis eight cases came to light which gave rise to the suspicion of an unlawful act in the handling of a complaint. We gave these cases a more detailed analysis and requested further information from the MPS.

In these cases we either concluded that the evidence from the MPS satisfied us that no unlawful acts had occurred or that, from the evidence available, it was not possible to conclude whether or not unlawful acts had occurred. It would have required a disproportionate use of resources to obtain the level of evidence needed to make conclusive findings on the balance of probabilities in these cases.

We also considered whether or not there was an unlawful act due to the differential treatment of discrimination complaints, compared to non-discrimination complaints. Inconsistency in the MPS's practices and the quality of data provided to us meant that we were unable to conclude whether or not any differential treatment had occurred.

## **Victimisation**

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Victimisation was a feature in the ET findings about Ms Howard's and Daniel Lichter's<sup>3</sup> claims of discrimination. We looked at specific cases where individuals had told us they felt they had been unlawfully victimised because they had raised a complaint involving claims of discrimination. On the basis of the evidence available to us in relation to the cases we assessed it was not possible to conclude that these particular individuals were being unlawfully victimised. This is because the evidence we received did not enable us to establish a causal link between the protected acts and subsequent detriments experienced by the individuals concerned.

## **Expectation of victimisation**

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There is an expectation widely held by staff and officers that victimisation will follow a complaint of discrimination. This prevents people from making complaints about discrimination and it limits the MPS's ability to tackle discrimination.

## **Confidence in handling difference and diversity**

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We heard that some managers lack the skills and confidence to handle difficult situations, particularly where these relate to diversity and more so when race is involved. One underlying reason for this was the MPS's 'painful history' regarding race. Managers are cautious when it comes to dealing with ethnic minority staff and officers and handling claims of racism. The approach to performance management is also an obstacle. Training for staff, officers and managers that was being delivered by the MPS in the time-period of our investigation did not give a sufficient focus on diversity. The training being offered to FAW Advisors (FAWAs) during this period

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<sup>3</sup> *Mr D K Lichters v The Commissioner of the Police of the Metropolis*, 14 May 2015.

was also insufficient and inconsistent and this had a detrimental effect on the important role that they were undertaking.

## **The MPS as a learning organisation**

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We saw clear examples that the MPS does have structures in place to learn from ET and other cases of concern, but this is not done consistently and appears to have limited impact. There is a definite appetite for more information and sharing of learning amongst managers who are keen not to be involved in repeating previous mistakes and are very open to improving performance in this area.

However there is also a clear culture of not apologising or admitting to mistakes, which limits the MPS's ability to learn and to improve.

## **What has happened since the investigation timeframe?**

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In response to the recommendations in the Acas report, the MPS has developed their Fairness at Work and Discrimination Complaints (FAWDC) Action Plan, the detail of which is contained in annex 1. The Commission agrees with many of the recommendations and the activities set out in the FAWDC action plan. There are areas we have identified in our investigation where we consider that the MPS needs to take more action than they are currently committed to. Firstly around addressing the issue where the expectation of staff and officers is that if they make a complaint involving discrimination they will be victimised and secondly in improving their evidence base in order to identify problems and demonstrate improvements.

## Findings

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- i. There is a complex and confusing interaction between the different parts of this statutory regime that means it is not possible to conclusively interpret the current legislation. This is apparent in the different ways that the legislation is interpreted by those organisations with legal responsibilities under it.
- ii. This lack of clarity on how the legislation should be interpreted leaves all police forces at risk of legal challenge from individuals.<sup>4</sup>
- iii. The MPS's interpretation of the legislation has led to a policy requiring escalation of all complaints of discrimination to the teams dealing with conduct matters so that they can examine whether the alleged discriminators should be subject to misconduct investigations. The Commission agrees with the MPS in terms of their construction of the wording of the regulations. However, the resulting policy puts individuals making these complaints at a disadvantage because it means that they do not get an opportunity to have their cases resolved as a grievance, where the focus would be on resolution rather than apportioning blame.
- iv. The MPS's approach to complaints of discrimination was inconsistent and confused and their SOPs were sometimes not followed.
- v. Despite the MPS's policy at the time of our investigation that discrimination complaints should be automatically referred out of the FAW process and into the local or central Department for Professional Standards (DPS), our evidence highlighted that the MPS did not consistently follow its own processes, especially if discrimination was not initially recognised.
- vi. This inconsistency in how cases were handled meant it was not possible to reach robust, conclusive legal findings about the MPS's SOPs.
- vii. The quality of the MPS's data made it difficult to reach any conclusions about whether or not direct discrimination had occurred against individuals who raised complaints of race, sexual orientation and sex discrimination, compared to the treatment of non-discrimination complaints which did not involve discrimination.

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<sup>4</sup> As illustrated recently by *Chief Constable of Greater Manchester Police v Bailey* UKEAT/0166/15/DA.

- viii. On the basis of the evidence available to us in relation to the cases we assessed it was not possible to conclude that individuals were being unlawfully victimised. This is because the evidence we received did not enable us to establish a causal link between the protected acts and subsequent detriments experienced by the individuals concerned.
- ix. There is a clear expectation amongst staff and officers that if you make a complaint of discrimination you will be victimised. This expectation of victimisation prevents people making complaints and limits the MPS's ability to tackle discrimination. The police culture of supporting loyalty could encourage behaviour that could be perceived as victimisation and this is counter to the Police Code of Ethics.
- x. Some managers lack the skills and confidence to handle difficult situations, particularly where these relate to diversity. This lack of confidence in handling difficult situations is particularly evident regarding race.
- xi. The training for staff, officers and managers that was being delivered by the MPS in the time-period of our investigation gave insufficient focus to diversity.
- xii. The provision of training in the time period of our investigation for FAWAs, who have an important role in relation to discrimination complaints, was insufficient and inconsistent.
- xiii. The DPS (who have a central role and also deal with all public complaints that come into the MPS), does not always correctly identify cases of discrimination, especially where it is less overt.
- xiv. While the MPS has structures in place that would enable them to share the learning from ETs (including cases that are won, lost or settled cases), FAW and other cases, it is not clear that this is being done consistently. Borough Commanders told us that they have an appetite for more information and sharing of learning so that they can improve performance where it is necessary and not repeat previous mistakes.

## Recommendations

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- i. The Home Office should revise the regulatory framework in order to enable low level complaints of discrimination to be handled as grievances. This would enable a focus on achieving resolution.
- ii. The Home Office should ensure that there is definitive clarity about:
  - a. When and how an internal complaint of discrimination must be referred to the appropriate authority.
  - b. What scoping can take place before a case is referred to the appropriate authority.
  - c. When internal complaints of discrimination must be referred to the Independent Police Complaints Commission (IPCC).
- iii. Under the current regulatory framework the MPS should ensure that any process used to assess whether or not a complaint has an element of discrimination should be applied consistently and transparently. This process should be monitored to ensure that a consistent approach is being taken.
- iv. The MPS needs to apply all of its processes consistently. Under the current regulatory framework the MPS needs to ensure that when discrimination is identified, these complaints are automatically referred to the DPS as the appropriate authority rather than requiring the individual to self-refer.
- v. The MPS should more clearly integrate its other complaint processes in order to ensure that discrimination complaints are always addressed, even if other appeals processes are used.
- vi. The MPS should improve its record-keeping to ensure greater consistency. This should include clear recording of dates, updates and outcomes regarding individual cases.
- vii. The MPS should improve the transparency of the process of handling discrimination complaints and improve its communications with complainants to ensure they are better informed on progress and outcomes.
- viii. The MPS should set realistic targets aimed at reducing the time it takes to deal with these complaints.
- ix. The MPS should ensure that the recommendations made by the FAWAs and other managers when dealing with local resolution both address the problems they are supposed to tackle and are carried out. This needs to include the

identification of those repeating discriminatory behaviour after sanctions have been applied.

- x. The changes carried out in response to the Acas report are insufficient. The MPS needs to take action to tackle the expectation of victimisation. This could include further analysis to assess whether there are links between making complaints of discrimination and acts of victimisation such as being barred from promotion or training opportunities.
- xi. As part of the MPS's work on culture and ethics, the MPS needs to make clear the expectation that those who make complaints of discrimination should be supported to have their cases assessed through the formal processes. Dealing with cases effectively and taking action if people discriminate, are a vital part of police ethics. The MPS needs to make it clear to officers and staff that complaints are an essential part of improving both the experience of colleagues within the organisation and the service that they offer to the community.
- xii. The MPS should strengthen the management skills of its officers and staff, especially in handling difficult situations and improving their confidence in dealing with race issues. This will help to reduce the risk of poor management which risks leading to a perception of victimisation.
- xiii. In addition to the training identified in the MPS's FAWDC action plan the MPS should establish a formal network of Professional Standard Champions (PSCs) to provide regular training on equality, diversity and handling complaints, and to support each other in their roles. PSCs should be consulted to ensure that this addresses their concerns.
- xiv. The MPS should establish a support network for FAWAs. FAWAs should be consulted to ensure that this meets their needs.
- xv. The MPS should monitor the effectiveness of training implemented as part of its FAWDC action plan in response to the Acas report.
- xvi. The MPS should review how its data is collected, stored, and retrieved and make the necessary improvements to enable them to undertake regular statistical analysis similar to the analysis produced for the Commission by Independent Social Research (ISR). This will help the MPS to identify trends and potential issues, including the outcomes of discrimination complaints and

disciplinary action. This will also enable the MPS to measure progress through the implementation of its FAWDC action plan and tackle issues regarding the perceived risk of victimisation.

- xvii. The MPS should review the effectiveness of its organisational learning process in relation to ETs and complaints and ensure that it is shared in a way that works effectively across the MPS.
- xviii. The MPS should take steps to improve the collection of self-reported data, particularly in relation to sexual orientation.

# 1. Introduction

## Background

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On 30 June 2014 the Central London ET found that the MPS had unlawfully discriminated against a female ethnic minority officer, PC Carol Howard, on grounds of race and sex. The ET also found that the MPS had victimised Ms Howard for complaining about discrimination through the MPS's FAW grievance procedures and for subsequently pursuing these complaints through an ET claim.<sup>5</sup>

Ms Howard's case raised serious concerns for the Commission not just because of the discrimination that she had faced but also because of the way that she had been treated by the MPS after she had complained about discrimination. The public statements released to the media by the MPS about Ms Howard after her successful ET claim were of particular concern to the Commission, because there was no acknowledgment of failures in the MPS's internal processes and no apology for Ms Howard. In their remedy judgment of 1 September 2014 the ET made a finding that one of the MPS media statements was intended to deflect criticism from them and portray Ms Howard in a negative way.

The remedy judgment recommended that there should be an independent review of the MPS's FAW procedures. The purpose of this review was to reduce the likelihood of others within the MPS being treated unlawfully in the way that Ms Howard was because they had raised complaints of discrimination.<sup>6</sup>

Previous reports by Morris (2004), Taylor (2005) and Chapman (2014) made recommendations to the MPS to improve handling of complaints. Although the MPS implemented these recommendations, the systemic issues they addressed were still apparent in the Howard case. Further details on these reports can be found in annex 2.

Given these factors and the risk of further unlawful acts occurring, on 22 September 2014<sup>7</sup> the Commission wrote to inform the MPS that we had decided to conduct a

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<sup>5</sup> *Howard v The Commissioner of the Police of the Metropolis* Case Nos: 2200184/2013 and 2202916/2013.

<sup>6</sup> *Ibid.*

<sup>7</sup> <https://www.equalityhumanrights.com/en/inquiries-and-investigations/investigation-metropolitan-police-service>

formal investigation under section 20 of the Equality Act 2006 into the unlawful discrimination, harassment and victimisation in the treatment of MPS personnel. The Commission may carry out an investigation using this power when it suspects that an organisation may have committed an unlawful act. The Howard ET judgment provided grounds for that suspicion.

As the statutory equality body, the Commission has unique powers to make unlawful act findings. These powers enable the Commission to compel relevant individuals and organisations to provide evidence.

On 6 October draft terms of reference for the investigation were sent to the MPS. As required by statute, the MPS were invited to make representations about the draft, which they did and which the Commission considered before finalising the terms of reference. The investigation was formally launched on 15 December 2014.

In the meantime the MPS had commissioned the services of Acas to conduct a review of the MPS's FAW process following the Howard ET's recommendations.

The Acas report makes a series of recommendations, and the MPS have produced the FAWDC action plan following this. Whilst this is outside the timeframe of our investigation, where relevant we make reference to the MPS FAWDC action plan.

## **Investigation scope (terms of reference)**

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The full terms of reference are in annex 3.

Our investigation sought to consider whether or not unlawful acts had occurred in the treatment of complaints from police officers and staff of gender, race or sexual orientation discrimination. In addition to Howard, the case of Maxwell<sup>8</sup> caused us to include sexual orientation in the scope. Complaints relating to other protected characteristics such as age or disability were not considered. Only complaints from MPS police staff and officers were considered, not complaints made by the public.

We considered the treatment of such complaints that were made to the MPS between 1 January 2011 and 30 September 2014.

We considered:

- a. Whether there was any difference in treatment between complaints of gender, race and sexual orientation and complaints that did not include discrimination,

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<sup>8</sup> *The Commissioner of the Police of the Metropolis v Maxwell* Case No: 2701619/2010.

including factors such as timeliness, fairness, transparency, reaching a resolution and redress for the complainant.

- b. The causes for any differential treatment identified.
- c. The extent to which the perception of organisational risk or reputation, costs to the organisation and/or the career prospects of implicated individuals impacted adversely on the independent operation of MPS procedures.
- d. The editing and quality assuring of reports relating to discrimination complaints.
- e. The training and guidance provided for personnel involved in running the MPS procedures.
- f. The procedures for referral of complaints to the DPS, or for other action by management.
- g. The steps taken by the MPS to reduce or eliminate the risk of unlawful acts occurring.

We did not examine whether or not the initial cause of complaint was unlawful. We only considered how the MPS had handled an individual's complaint.

Unlike an ET which considers only individual cases, we considered whether or not the MPS's procedures and how these were operated in practice amounted to either direct or indirect discrimination.

In order to do this we compared (according to the factors set out in point a above) the treatment of cases in the scope of our investigation (complaints of sex, race and sexual orientation discrimination) with complaints not involving discrimination.

Direct discrimination is when a person treats another less favourably than they would treat others because of a protected characteristic. In our investigation we considered whether or not the MPS's treatment of individual discrimination complaints amounted to direct discrimination.

Indirect discrimination can happen if an employer has a practice or rule which seemingly applies to everyone in the same way but has a worse effect on some people than others. We considered whether the MPS's practices may be unlawful because their policy requiring all FAW and other complaints of discrimination to be automatically referred to the DPS as potential conduct issues meant those raising these complaints were at a disadvantage. This disadvantage could be the lack of informal resolution that would be available if the complaint was handled as an FAW complaint.

We also considered whether the MPS victimised people. Unlawful victimisation is when someone suffers a detriment because they have carried out a protected act.

## **Investigation governance**

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Commissioner Laura Carstensen was appointed lead commissioner for the investigation and reported progress to our board.

The Commission's decision to investigate was regularly reviewed throughout the investigation. Ongoing support from the board to continue and complete the investigation was confirmed at several key stages of the investigation.

## **Methodology and sampling**

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### **Proportionality**

Throughout the investigation the Commission has been mindful of proportionality. This is reflected in decisions made in our methodology regarding sampling and our requests to the MPS for evidence.

### **Individual cases**

A call for evidence was placed on the Commission's website and the MPS intranet. We were contacted by 106 officers, staff, FAW Advisors and staff support organisations. We interviewed 32 of those as their experience was relevant to our terms of reference. At our request the MPS provided information and papers for 11 of these.

It was neither proportionate for the MPS to provide information on all relevant cases in our timeframe nor practical for the Commission to analyse all such cases. For that reason we considered the sample cases of:

- All FAW cases from October 2013 to September 2014 where sex, race or sexual orientation discrimination was raised as the primary complaint.
- All FAW cases raised in May and June 2013 including cases, not overtly involving discrimination, to enable an assessment of how many FAW cases involved relevant discrimination issues even where discrimination was not the primary complaint.

- All misconduct cases involving allegations of sex, race and sexual orientation discrimination from October 2012 to the end of September 2014. Detailed papers were requested on 38 cases chosen to reflect different protected characteristics and other variables.

This resulted in the MPS providing papers for 223 FAWs and 38 disciplinary cases in our timeframe.

Eight cases were identified where we thought unlawful acts, as defined in our terms of reference, may have occurred. More detailed evidence on these cases was provided by the MPS.

Where individuals had lodged their complaint at ET and the case had not yet concluded, we did not include them in our investigation so as not to prejudice the outcome of their case.

### **MPS police officers and staff and MPS managers**

We held interviews with 20 police officers and staff who work or had worked on FAW complaints or in the DPS, and focus groups sessions were held with Borough Commanders and Professional Standards Leads.

### **Policies, practices, procedures, data and reports**

We attended workshops with the MPS on the complaints procedures and training. The MPS also provided two written briefings on their complaints processes, including changes that had been made and were pending, and data on the workforce, FAW complaints, disciplinary cases and ETs. The MPS provided us with the relevant SOPs, policies, regulations and reports. Annex 4 provides full details on this.

### **Oral evidence sessions**

On 11 November 2015 the MPS participated in an oral evidence session. They were represented by Robin Wilkinson, Director of People and Change, Assistant Commissioner Martin Hewitt, Professionalism Lead and Clare Davies, Director of Human Resources.

### **Roundtable**

On 21 April 2016 the Commission held a roundtable with the MPS, the IPCC, MOPAC, the Greater Manchester Police (GMP) and Acas which considered the

regulatory framework. The MPS arranged a follow up session to this on 6 June 2016 which focused on examples of how they had interpreted the regulations in practice.

### **Key stakeholders**

We met key stakeholders including: MOPAC, the IPCC, the College of Policing, the Police Federation and Her Majesty's Inspectorate of Constabulary (HMIC). We attended a focus group session arranged by the BPA and met and interviewed several members of S.A.M.U.R.A.I. (Staff support Associations Meeting up Regularly and Interacting) the collective voice of the MPS staff support associations. We also interviewed representatives from the Police Federation and the police staff unions Unite and the PCS.

### **Statistical analysis**

We contracted ISR to assess the MPS data to examine if there were differences in the outcomes for the disciplinary and grievance procedures as a whole, with regard to gender and ethnicity.<sup>9</sup> The statistical methods used sought to identify any differences that were due to gender or ethnicity alone, by adjusting for other characteristics such as age, rank or length of service. This particularly focused on examining links between raising a complaint and then being subject to disciplinary procedures.

### **Relevant regulatory reports**

We also reviewed previous relevant reports as background information including the Morris, Taylor and Chapman reports. The recent Acas review was also considered.

### **Acknowledgements**

We are grateful to the MPS and all of the individuals who have provided evidence that has informed our investigation. In particular we would like to thank those individuals who agreed to be interviewed and shared their experiences with the Commission.

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<sup>9</sup> Complaints made which identified sexual orientation discrimination were not sufficient in number to enable statistical analysis.

## 2. The regulatory framework

### Introduction

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The statutory regime that covers internal complaints of misconduct for police officers and staff is made up of various different pieces of legislation.

### Findings

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- i. There is a complex and confusing interaction between the different parts of this statutory regime that means it is not possible to conclusively interpret the current legislation. This is apparent in the different ways that the legislation is interpreted by those organisations with legal responsibilities under it.
- ii. This lack of clarity on how the legislation should be interpreted leaves all police forces at risk of legal challenge from individuals.<sup>10</sup>
- iii. The MPS's interpretation of the legislation has led to a policy requiring escalation of all complaints of discrimination to the teams dealing with conduct matters so that they can examine whether the alleged discriminators should be subject to misconduct investigations. The Commission agrees with the MPS in terms of their construction of the wording of the regulations. However, the resulting policy puts individuals making these complaints at a disadvantage because it means that they do not get an opportunity to have their cases resolved as a grievance, where the focus would be on resolution rather than apportioning blame.

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<sup>10</sup> As illustrated recently by *Chief Constable of Greater Manchester Police v Bailey* UKEAT/0166/15/DA.

## Statutory misconduct framework

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The MPS's workforce consists of both police officers and staff. Police officers are not employees; they are officers of the crown, which gives them unique powers. In the UK, police officers swear an oath promising to serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people.<sup>11</sup> Police staff on the other hand, including Police Community Support Officers (PCSOs), are employees.

For both officers and staff, unlawful discrimination in relation to colleagues (or the public) is deemed behaviour that may lead to disciplinary action.<sup>12</sup>

In England relevant pieces of legislation governing police officers and staff conduct are:

- The Police Reform Act 2002 (the 2002 Act).<sup>13</sup>
- The Police (Complaints and Misconduct) Regulations 2012 (the Complaints Regs).
- The Police (Conduct) Regulations 2012 (the Conduct Regs).

Some staff misconduct can be dealt with under standard employment law,<sup>14</sup> depending on the circumstances, whereas police officer misconduct is dealt with under the laws stated above.

## What the legislation says

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The 2002 Act defines 'conduct matters'. These are circumstances where officers (and staff) have behaved in a manner that would justify bringing disciplinary proceedings against them. If certain conduct matters<sup>15</sup> come to the attention of the 'appropriate authority' the 2002 Act requires such matters to be 'recorded'. These are called 'recordable conduct matters'. In the MPS, the appropriate authority is the DPS.

Any behaviour which could lead to misconduct proceedings, including discrimination, is classed as recordable conduct. The 2002 Act requires recordable conduct to be referred to the IPCC without delay.

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<sup>11</sup> The Police Reform Act 2002 s.83 Attestation of Constables.

<sup>12</sup> Equality Standard Operating Procedure, version 2. 10 November 2010. Paras 3.2 of SOP. And paras 1.3, 2.2, 9.10 of Annex A to the SOP. The SOP refers to the Equality Act 2010. s.12 (2) (b) Police Reform Act 2002

<sup>13</sup> S.13 handling of complaints and conduct matters etc. Police Reform Act 2002. Refers to Schedule 3 of the Act.

<sup>14</sup> Police Staff Disciplinary SOP.

<sup>15</sup> As defined in Regulation 7 of the Complaints Regs.

If the IPCC refers the matter back then the appropriate authority will then consider it and decide whether the behaviour complained about could lead to misconduct proceedings.<sup>16</sup> In order to make this decision the appropriate authority carries out a 'severity assessment'. If the appropriate authority decides that the matter complained about is serious enough to fall within the gross misconduct category this means a public hearing and possible dismissal for the person concerned.

A flow chart in annex 5 sets out the different interpretations.

## **Making a complaint of discrimination**

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Police officers or staff who experience discrimination by other police officers or staff have several routes to making a complaint. One way is to raise a FAW complaint. They may also raise their concern with the Professional Standards Unit (PSU), report wrongdoing directly to the DPS or use the Right-line to report wrongdoing anonymously.

It is not clear under the regulations when a FAW complaint should be escalated to the DPS as misconduct, nor how much scoping or fact finding can occur as part of the FAW process.

## **Different interpretations of the misconduct regime**

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### **The MPS's interpretation of the misconduct regime during the timeframe of our investigation**

During the timeframe of our investigation, the MPS considered that complaints that involved discrimination should not be handled within the FAW process. Instead, all FAW complaints involving discrimination should be escalated to the DPS because they are potential conduct issues. The next chapter covers the MPS's SOPs in more detail.

### **The IPCC's interpretation of the misconduct regime**

The IPCC exists primarily to deal with police conduct matters relating directly to members of the public. The intention of Parliament in the 2002 Act was not that the IPCC should govern all internal complaints from police forces.

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<sup>16</sup> Regs 5 and 12 of the Police (Conduct) Regulations 2012.

Internal complaints of discrimination should only be referred to the IPCC if the behaviour being complained of would constitute criminal or misconduct proceedings without taking into account the element of discrimination.

### **The Acas interpretation of the misconduct regime**

The Acas Review<sup>17</sup> considers that when an individual makes a complaint of discrimination as a FAW complaint, then the FAWA is able to factually scope the case. Their scoping should identify if there is merit in the discrimination complaint. If there is merit then the complaint should then be reported to the DPS, who are the appropriate authority within the MPS. At the point when the DPS receives the case, then Acas are of the view that this is when the DPS are obliged to refer to the IPCC promptly.

The relevant Acas Review recommendation says: “It is recommended that FAWAs shall be permitted to conduct full reviews of grievances alleging discrimination and to make findings on the balance of probabilities on whether complainants were treated unfairly with reference to a protected characteristic. In the event of any such finding being made, the matter shall be referred to the DPS for it to carry out a severity assessment”.<sup>18</sup>

### **The Commission’s analysis of the differing interpretations**

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The differing interpretations cover two key elements:

- The escalation of discrimination complaints as conduct matters.
- Referral of internal discrimination complaint to the IPCC.

#### **The escalation of discrimination complaints as conduct matters**

The Acas interpretation of the FAWA’s powers is problematic. There is an obligation on the MPS as the appropriate authority to take steps to refer the complaint to the IPCC without delay. The Commission considers it unlikely that if the FAWA thinks there is merit to the complaint of discrimination that the legislation permits the MPS to wait for FAWAs to scope a complaint before passing it to the DPS.

It is our view that once the DPS becomes aware of an allegation that an officer or member of staff has discriminated against another, they must treat this as recordable conduct. This is the case whether the allegation of discrimination is made explicitly,

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<sup>17</sup> Review of Fairness at Work Report by Roy Lewis and Acas.

<sup>18</sup> *Ibid.*, para 40.

or in a way that should be obvious to someone trained to identify discrimination. This should apply both to FAW complaints and other internal appeal mechanisms such as those relating to flexible working or performance management.

Even if the legislation were to allow some degree of FAWA scoping prior to referral to the DPS, there is uncertainty about precisely what detail of scoping is permitted and how detailed it may be. It is not clear, for example, what the extent of fact finding is permitted for this purpose.

### **Referral of internal discrimination complaint to the IPCC**

The Commission, the MPS and the IPCC agree that once a discrimination complaint is made to the DPS it must be treated as a recordable matter. It is not clear however what obligation there is for the DPS to report these matters to the IPCC.

The Commission disagrees with the IPCC's interpretation of the conduct regime because the 2002 Act says all behaviour that could constitute misconduct is capable of being referred to the IPCC. This includes discrimination.

Although it would be undesirable for the legislation to require referral of all and any discrimination complaints to the IPCC; if that is what is required and the MPS does not take this approach, it may potentially lay itself open to criticism or other action from disappointed complainants or those who are the subject of complaints.

It is notable that the MPS's difficulty in dealing with the legislation was not an issue that had been raised by the MPS in their defence of the Howard case, nor in discussions with the Commission prior to the commencement of the investigation.

Whilst the MPS had previously highlighted the complexity of the regulatory framework to the Commission, at the oral evidence session on 11 November 2015 the MPS told us that the Acas report, published in November 2015 had shone a light on this issue for them.

The MPS and the Commission now share the same legal interpretation of the statutory misconduct regime.

#### **The MPS's current interpretation of the statutory regime**

'We think we would breach the misconduct regulations if we interpret the regulatory framework in a way that keeps a conduct matter in the grievance process until a reasonably detailed fact finding exercise is concluded and/or until findings of discrimination

or less favourable treatment are made.’<sup>19</sup>

‘The big question that therefore remains is how far fact finding can reasonably go before determining whether a matter should remain a workplace grievance or move into misconduct’.<sup>20</sup>

## **What does this mean for individuals making a complaint of discrimination?**

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All employers are required to have grievance procedures to resolve workplace disputes. Yet the regulations mean that those making internal complaints of discrimination in police forces, even if some degree of scoping is permitted, are denied the opportunity to have internal complaints of discrimination handled through the grievance procedure.

Handling appropriate discrimination complaints as a grievance would mean that the focus would be on achieving resolution, as opposed to apportioning blame and giving out sanctions. Chapter 7 details what we heard from managers, officers and staff about how they would prefer lower level complaints of discrimination to be handled.

A further implication of the escalation of all complaints of discrimination is that the relevant sanctions for police misconduct are serious. They can include dismissal from the police service. Individuals considering whether to make a complaint are aware of this, as are managers handling these complaints. This may mean that individuals are reluctant to make a complaint, or managers may try to stop a complaint progressing because of the severity of the consequences. This may reduce the number of complaints that are made and reduce the MPS’s opportunity to tackle discrimination.

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<sup>19</sup> Para 1.10 of evidence submitted to the Equality and Human Rights Commission dated 4 May 2016 after Equality and Human Rights Commission regs roundtable on 21 April 2016.

<sup>20</sup> Para 1.12 of evidence submitted to the Equality and Human Rights Commission dated 4 May 2016 after Equality and Human Rights Commission regs roundtable on 21 April 2016.

## Recommendations

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- i. The Home Office should revise the regulatory framework in order to enable low level complaints of discrimination to be handled as grievances. This would enable a focus on achieving resolution.
- ii. The Home Office should ensure that there is definitive clarity about:
  - a. When and how an internal complaint of discrimination must be referred to the appropriate authority.
  - b. What scoping can take place before a case is referred to the appropriate authority.
  - c. When internal complaints of discrimination must be referred to the IPCC.

## Suggested revision of the regulatory amendment

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The Commission agrees with the suggestion that Acas make in their report, that a new provision, Regulation 7(6), is inserted into Regulation 7 of the Complaints and Misconduct Regulations 2012. It suggests the following wording, which is a slight change from that proposed by Acas:

*(1) Notwithstanding Regulation 7(5)(a) the recording of a conduct matter and its referral to the Commission, insofar it consists of “behaviour” referred to in paragraph 1(d), may be preceded by the appropriate authority considering or determining a grievance that there has been unfair treatment relating to a protected characteristic*

*(2) Protected characteristic has the same meaning as in section 4 of the Equality Act 2010.*

## 3. The MPS's systems for identifying discrimination complaints and referral to the DPS

### Introduction

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This chapter considers the MPS's SOPs during the timeframe of our investigation. As discussed in the previous chapter the key issues were how complaints of discrimination are identified, what scoping can occur during the FAW process, how complaints of discrimination are referred to the DPS and how misconduct cases are handled.

Our findings follow detailed examination of evidence provided by the MPS and our interviews with individuals, and consider whether or not unlawful acts occurred, as set out in the terms of reference.

### Findings

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- iv. The MPS's approach to complaints of discrimination was inconsistent and confused and their SOPs were sometimes not followed.
- v. Despite the MPS's policy at the time of the investigation that discrimination complaints should be automatically referred out of the FAW process and into the local or central Department for Professional Standards (DPS) team, our evidence highlighted that the MPS did not consistently follow its own processes, especially if discrimination was not initially recognised.
- vi. This inconsistency in how cases were handled meant it was not possible to reach robust, conclusive legal findings about the MPS's SOPs.

## How complaints were handled during our investigation timeframe

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MPS had clear SOPs in place during the timeframe of our investigation. A summary of these is set out in annex 6.

### **The MPS's SOPs for when discrimination is identified during a FAW**

The FAW SOP and Equality Policy enable discrimination complaints to be made via the FAW process. The FAW process cannot apportion blame. The MPS process referred discrimination complaints to the disciplinary and misconduct processes, when Human Resources (HR) considered there was potential misconduct based on the contents of the FAW complaint form. During the timeframe of our investigation where the initial FAW submission included claims of inappropriate or discriminatory<sup>21</sup> behaviour the complainant was 'strongly advised'<sup>22</sup> by the FAW co-ordinator to<sup>23</sup> refer the matter themselves to the PSU, report a wrongdoing or use the Right-line to report a problem anonymously.

When discrimination comes to light during the FAW review, the FAW SOP says the complaint should be placed on hold and referred to the DPS to make an assessment based on the FAW Advisor's review. Any separate and outstanding issues raised by the complainant in their FAW are dealt with at the conclusion of the disciplinary or misconduct investigation. Up until May 2014, prior to Ms Howard's case, the FAWA Report guidance<sup>24</sup> said 'Take great care not to make any assessment regarding discrimination – this is not an advisor's role'.

A flow chart setting out MPS's procedures is contained in annex 7.

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<sup>21</sup> MPS June 2015 Briefing says: 'Cases where there appears to be **clear prima facie evidence** to support an allegation of discrimination or bullying/harassment at the outset of the submission are sent to DPS for assessment immediately.'

<sup>22</sup> The MPS presentation to the Equality and Human Rights Commission, February 2015.

<sup>23</sup> Although not in the FAW SOP, this was the standard process stated by the MPS and set out in the Acas report. The FAW Co-ordinator sent out a standard email stating this.

<sup>24</sup> Form 6687 and 6688 Notes for guidance on completion of the FAW Advisor's Report.

## Identification of discrimination

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The MPS does not always identify when FAWs raise complaints of discrimination. As the regulatory framework prescribes specific treatment of complaints of discrimination, it is vital that potential discrimination complaints are accurately identified in order to ensure that the correct procedures are followed. The MPS risks not handling complaints of discrimination properly by failing to correctly identify these complaints and could be at risk of future legal claims as the correct procedures according to the regulatory regime may not have been followed.

Within the case documentation provided by the MPS we identified several cases which we would consider to be discrimination complaints but these were not identified as such by the MPS. These included flexible working applications which were dealt with in a way that may have amounted to indirect sex discrimination. These issues were not immediately recognised as discrimination complaints by the managers dealing with them.

The identification of discrimination can be further compounded when complaints must be addressed through separate appeal mechanisms, even when these complaints make specific reference to discrimination. There are separate appeals procedures in place for flexible working requests, performance management and many other internal procedures.

### **Examples of discrimination not being addressed**

#### ***A complaint of discrimination not addressed in the FAW process***

In 2013 Officer Y made a complaint of sex discrimination. She had successfully applied for a development opportunity in a different borough, but her new manager had refused to authorise the flexible working arrangements that she already had in place. This was due to operational reasons. Earlier that year, the same manager allegedly said to Officer Y 'in this job you have to decide whether it's a career or family you want'. Twelve months later in 2014 the FAWA's report stated that they would not address any issues of discrimination because that was not their role. The complaint was not referred to DPS or PSU and Officer Y was not advised to report misconduct. As a result the element of discrimination in her complaint was never addressed by the MPS.

***A complaint of discrimination not addressed in a separate appeal mechanism***

In 2014 Officer Z complained about race and sex discrimination by her line manager and other sergeants. The complaint included comments about her appearance and her accent. She felt that this had led to her being treated more harshly than others as she was placed on an action plan when others were not. She also felt that women were being treated more harshly than men. As the complaint related to performance management, the MPS's performance management system (Unsatisfactory Performance Procedures (UPP)) has a separate appeals process and her FAW complaint was closed almost immediately. She was not advised to report wrongdoing for the discrimination element of her complaint, and the discrimination element was not addressed.

The MPS did not apply its procedures consistently. In some cases the FAWA did investigate discrimination and make findings.

**A FAWA investigation of complaints of discrimination**

Officer P alleged that he was victimised by his line managers because of a previous claim of race discrimination that he had lodged against the MPS at ET. The information that we received from the officer states that he had settled this claim with MPS and that a number of officers were disciplined as a result. He then moved to work on a different borough. Officer P alleged his line managers in the new borough discriminated against him and victimised him and that this was due to the fact that they knew about his previous race discrimination claim. In 2012 he raised a complaint through the FAW process. His complaint was not considered serious enough to be investigated by the DPS and was instead referred to the PSU of a neighbouring borough for an independent investigation (the PSU deals with less serious

conduct matters). Despite none of the witnesses or the accused being interviewed, a 30-page investigation report based on Officer P's account in his FAW complaint concluded that none of Officer P's complaints amounted to discrimination. The complaint was then passed to a FAW Advisor to investigate residual matters not covered by the PSU investigation report. None of the accused line managers agreed to be interviewed by the FAWA because Officer P had by that time issued a second race discrimination claim at ET because of their alleged conduct. Instead they provided short written statements in response to the FAW Advisor's questions, explaining their conduct and disputing that it amounted to discrimination. Officer P's complaint was not upheld. He received a copy of the FAWA report in 2013.

## Ensuring referral to the DPS

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Under the SOP, the onus is on the complainant rather than on FAWAs and management to report and escalate allegations of discrimination. The referral is not made automatically by the MPS. This was not done consistently. In some cases individuals did not go on to report their discrimination complaints to the DPS. In other cases their complaints were automatically referred to the DPS.

### **Example of a case not being referred to the DPS**

Officer M made serious allegations of homophobic discrimination involving multiple team members and also of witnessing race discrimination against another officer. He was advised by HR to report wrongdoing or report the matter to his local PSU. The MPS have no record of a complaint of discrimination being received by the DPS from this officer.

### **Misconduct investigations about allegations of sex, race and sexual orientation discrimination**

The 38 misconduct cases that we examined involving allegations of discrimination highlighted inconsistent practice. There was variable understanding amongst investigating officers about the nature of discrimination. We saw examples where some cases identified discrimination when it appeared unlikely to have been a factor. By contrast, in another case where discrimination appeared to have been persistent, instances of discrimination were categorised under the headings of Authority, Dignity and Respect rather than Equality and Diversity and thereby potentially minimised. In some cases, we detected a tendency to minimise allegations of discriminatory behaviour early in the investigation. This included by questioning complainants' motives or explaining away discriminatory statements as work banter.

A common reason for allegations of discrimination being found to be unsubstantiated is that they are classified as 'not capable of proof', inferring that it is one person's word against another. Where allegations of discrimination are unsubstantiated they are far more likely to be minimised. Because of the potential consequences of misconduct proceedings there needs to be rigour. The effect of this approach can be that valid complaints of discrimination, referred from FAW in accordance with the SOP, are left unresolved because they cannot be independently substantiated. If they remained as a FAW a resolution may be found.

Misconduct investigations can often be lengthy. This appears to be the case whether or not they concern allegations of discriminatory conduct.

We have concerns about the different ways in which the MPS treated discrimination complaints during the period of the investigation. Due to the lack of consistency in treatment overall and because the MPS's FAW evidence was incomplete we were unable to make conclusive findings about whether these practices represented unlawful acts.

## Recommendations

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- iii. Under the current regulatory framework the MPS should ensure that any process used to assess whether or not a complaint has an element of discrimination in it should be applied consistently and transparently. This process should be monitored to ensure that a consistent approach is being taken.
- iv. The MPS needs to apply all of its processes consistently. Under the current regulatory framework the MPS needs to ensure that when discrimination is identified, these complaints are automatically referred to the DPS as the appropriate authority rather than requiring the individual to self-refer.
- v. The MPS should more clearly integrate its other complaint processes in order to ensure that discrimination complaints are always addressed, even if other appeals processes are used.

## 4. Treatment of personnel raising complaints of sex, race and sexual orientation discrimination compared to non-discrimination complaints

### Introduction

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We compared summary data provided by the MPS on how cases were handled including the key factors from our terms of reference in order to consider whether or not there was direct discrimination due to less favourable treatment of someone who raised a complaint of discrimination. The full details of how this comparison was carried out are contained in annex 8.

### Findings

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- vii. The quality of the MPS's data made it difficult to reach any conclusions about whether or not direct discrimination had occurred against individuals who raised complaints of race, sexual orientation and sex discrimination complaints, compared to the treatment of non-discrimination complaints which did not involve discrimination.

### Accuracy of identification of discrimination

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In order to make a comparison between individual discrimination and non-discrimination complaints we first analysed the accuracy with which the MPS had classified complaints as complaints of discrimination. Our review of the summary data provided by the MPS identified significant issues with this. Cases are often classified as 'issue with first or second line manager'. This does not capture whether or not this issue was related to discrimination. In some cases there was insufficient

information provided in order to determine whether or not the complainant was in fact making a complaint of discrimination.

Some cases that we received had been identified by the MPS as discrimination cases. From the documentation that we received we found that there was insufficient information to enable us to assess whether they were discrimination cases or not.

The problems with data and information, and those identified in more detail below, meant that it was not possible for us to make robust legal findings regarding the MPS's handling of direct discrimination.

## **Consideration of factors as set out in part 3a of the terms of reference**

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### **a. Reaching a resolution and (where appropriate) redress for the complainant**

Those making non-discrimination complaints are able to access informal resolution. It is not possible to definitively interpret the regulatory regime to determine whether it is possible to do this for discrimination complaints. The MPS's policies during the timeframe of the investigation did not permit informal resolution. However, our interviews suggested that those making such complaints may want informal resolution. Often the primary motive for complaints is to get an apology and informal resolution, and this did not happen under the MPS policies and procedures in place.

#### **Examples of the desire for informal resolution**

'That was all that the PC wanted, for his hurt feelings to be acknowledged and for it to be dealt with.' (Quote from Professional Standards Lead)

The PC in this example did not get an apology.

'When the Fairness at Work investigator was initially talking to me. He said, "Would you consider mediation with these Line Managers?" I said, "Absolutely." And he said, "Well what would you want as a final outcome to all of this?" And I said, "All I would like is for the managers to realise that their actions have caused me this stress and this upset and I'd like them to apologise to me. That's all I want. I don't want anything else.'

‘Until this day they’ve never, ever apologised. All I wanted was an apology’

Resolution of a complaint must also ensure that any actions taken to tackle behaviour are successful. Our evidence included cases of some repeat offenders, where individuals had repeated the same behaviour despite having had sanctions applied to them previously.

### ***Making a comparison with non-discrimination complaints***

It was not possible to make a comparison with non-discrimination cases, because of a lack of information regarding some cases on the system. In the majority of cases, the original FAW complaint form had been retained but other records pertaining to the complaint were very brief or incomplete. In some cases, even the FAWA report was not included. In contrast, a small number of cases contained copious amounts of documents that were very difficult to follow. One case had documents totalling around 1,000 pages.

It was not always clear how complaints were dealt with. It was difficult to determine what the outcome was in some cases, or whether the complaint had been properly investigated, or informally resolved. In some cases records ended abruptly part way through the process for no recorded reason, so we could not reach any conclusions as to whether the case was satisfactorily resolved. Where the complaint had been resolved informally the resolution was not recorded on the system.

### **b. Timeliness handling complaints**

The length of time that FAW complaints take to resolve was raised as a consistent issue in our interviews.<sup>25</sup> It was difficult for the Commission to assess whether there was a difference in timeliness for discrimination complaint resolution compared to non-discrimination complaints due to the way in which the MPS systems record information. Examples of this included cases where there were no recorded outcomes, or the records ended part way through the complaint process.

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<sup>25</sup> ‘The FAW should be completed in 28 working days and in exceptional circumstances 56 working days (FAW SOP).

### **Examples of time taken to handle complaints**

- Staff member O waited for further information on their complaint for over 12 months. It is not possible to conclude from the documents we have what the outcome was or how long it took to finally resolve the complaint.
- Officer H made a complaint in May 2013 and did not receive the FAWA's report until May 2014, some 12 months later.
- Officer J submitted a complaint in July 2014. The initial attempt at local resolution and appointment of a FAWA took 2 months. After 7 months the FAWA was in the process of arranging a final resolution mediation meeting between Officer J and the Borough Commander. There is no FAW report on record and no indication that a FAWA report was ever written, as it should have been in accordance with the FAW procedure. There are no further records after this point and there is therefore no evidence of when the complaint was concluded or what the outcome was.
- Officer T's complaint lasted 11 months. She submitted a complaint in April 2014. This was a complex complaint with several subjects and witnesses, and it appears there were operational reasons for some of the delay. In January 2015 the FAWA said it would take another two weeks to finish writing the report. By March 2015 when the records end, the FAWA report had still not been completed. This officer has since left the police force.

### ***Making a comparison with non-discrimination complaints***

It was not possible to make a comparison because from the information provided it was difficult to conclude when a complaint was made or when it was closed. In many cases, it was not possible for us to determine with certainty whether cases had been concluded or what the conclusions were.

### **c. Transparency of handling complaints**

We considered the transparency with which the complaints of individuals were handled. This included keeping the complainant up to date with progress, and explaining the results of the investigation of their complaint to them.

Interviewees told us about problems with the transparency of the FAW complaints process and complained there was an overall lack of communication. They felt that they had not been kept up to date with the progress of their complaint nor informed of its resolution.

#### **Examples of lack of transparency**

Staff member J complained of race discrimination. Her complaint was sent back to her Borough to attempt a local resolution. After 4 months with no contact, during which time she had to work alongside the people she'd complained about, she asked HR if they would retrieve her complaint from the Borough and deal with it themselves: '...I have been waiting for 4 months to speak to someone about this'.

Staff member E raised a FAW complaint about the new leave calculation system which she alleged resulted in loss of her leave, which had an impact on her childcare arrangements. The service record shows the complaint as being locally resolved, but a later entry in the record shows that 7 months later, staff member E was unaware the complaint had been closed and was still waiting for it to be resolved. HR refused to reopen her complaint due to the passage of time.

#### ***Making a comparison between the treatment of discrimination complaints and non-discrimination complaints***

It was not possible to make a comparison with non-discrimination complaints because from the evidence provided it was not possible to identify if and how individuals were kept updated with progress on their complaint.

## Recommendations

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- vi. The MPS should improve its record-keeping to ensure greater consistency. This should include clear recording of dates, updates and outcomes regarding individual cases.
- vii. The MPS should improve the transparency of the process of handling discrimination complaints and improve its communications with complainants to ensure they are better informed on progress and outcomes.
- viii. The MPS should set realistic targets aimed at reducing the time it takes to deal with these complaints.
- ix. The MPS should ensure that the recommendations made by the FAWAs and other managers when dealing with local resolution both address the problems they are supposed to tackle and are carried out. This needs to include the identification of those repeating the same discriminatory behaviour after sanctions have been applied.

## 5. Unlawful victimisation

### Introduction

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In this chapter we consider whether or not the MPS unlawfully victimised officers and staff in its conduct proceedings.

Unlawful victimisation occurs when person A, subjects another person, B, to a detriment, because B has done a protected act, or A thinks B has done or may do a protected act. Protected acts include bringing legal proceedings under the Equality Act 2010 or making a complaint, being a witness or alleging someone has done something unlawful under the Act.

Evidence from ETs show that unlawful victimisation has occurred within the MPS as a result of individuals making complaints of discrimination.

### Finding

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- viii. On the basis of the evidence available to us in relation to the cases we assessed it was not possible to conclude that individuals were being unlawfully victimised. This is because the evidence we received did not enable us to establish a causal link between the protected acts and subsequent detriments experienced by the individuals concerned.

### Background

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The ET in Ms Howard's case found that the MPS had victimised her for making allegations of race and sex discrimination. In Ms Howard's liability judgment the ET's findings of victimisation related to a senior colleague's bullying and intimidating behaviour toward her the day after she submitted her FAW, the content of another senior colleague's findings report about Ms Howard's FAW complaint and the MPS's

instructions to the FAWA later to remove all references to and findings of discrimination from her report.

Ms Howard issued separate claims against the MPS for wrongful arrests and victimisation for which she later agreed confidential settlement terms with the MPS. The victimisation claim included the way the MPS handled the information that they provided to the media about Ms Howard's successful ET claim against them. Ms Howard felt that the press lines were 'drafted to damage [her] reputation' and 'issued to deflect attention and criticism from the Respondent and to portray [her] in a negative light'. The way the MPS handled the information it released was also one of the reasons the ET awarded Ms Howard's aggravated damages at her remedy hearing.

Para 68 of the ET remedy judgment includes their finding that:

'Following the decision of the tribunal the Respondent did not in its press releases or interviews express any regret about the way that she had been treated or offer her an apology for it. Instead, in order to deflect the criticism that was being directed at it, the Respondent released information (over and above what was required) which you knew would cause serious damage to the Claimant's reputation. We have considered that the conduct set out in this paragraph was insulting, malicious and oppressive.'

The way Ms Howard was treated for complaining about discrimination was entirely at odds with public statements by the MPS about their desire to tackle race and other types of discrimination within their workforce.

Victimisation was therefore included as a specific focus of our investigation, as set out in the terms of reference.

In May 2015 another ET found that within the timeframe of our investigation the MPS had victimised an officer who raised allegations of discrimination.<sup>26</sup> This case was brought to the ET by PC Daniel Lichters following his FAW complaint of discrimination because of his sexual orientation.

In June 2016 it was reported in the media that PC Ricky Haruna, a black female MPS officer, had settled her ET claim against the MPS. Information provided by PC Haruna's lawyers states that she had complained to her line managers and the Diversity Officer about incidents of racist behaviour toward her on several occasions going back to 2010. Information from the MPS states she did not use the FAW procedure to make these complaints. In December 2013, after the Crown

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<sup>26</sup> Paras 547 and 548 of the Lichters ET judgment.

Prosecution Service (CPS) had recommended no further action for an alleged crime for which PC Haruna was suspended, the MPS brought formal misconduct proceedings against her. In January 2014, PC Haruna made a further complaint of race discrimination and this complaint was sent by her Inspector in an intelligence report to the DPS. This complaint resulted in an investigation into five officers. In June 2014 PC Haruna was sacked for gross misconduct. She successfully appealed and was reinstated on full pay in March 2015. The investigation into the five officers concluded in February 2016 and found there was no case to answer. The MPS assert that there is no causal connection between PC Haruna's dismissal and the disciplinary action taken, because PC Haruna was not dismissed for raising race discrimination complaints and the disciplinary action against her was taken before she made the allegations of race discrimination.

During the course of the investigation the Commission was informed about other cases lodged at the ET in which the complainants alleged they had been victimised following discrimination complaints. Some of these cases have since been settled.

As set out in our terms of reference we have considered only victimisation by the people responsible for the operation of the MPS procedures. Although reported to us, we did not consider victimisation by people not involved in the case, for example the inappropriate treatment of the complainant in the canteen by colleagues, due to rumours being circulated.

We identified and examined in greater detail several cases where there was evidence that individuals had potentially been subject to unlawful victimisation after having made a complaint of discrimination.

**Examples of cases we considered which appeared to demonstrate potentially unlawful victimisation**

- Dismissal of an ethnic minority officer for damage to MPS property. The officer alleged that the investigation into the damage and his dismissal was unfair treatment because it was carried out only because members of his family had made claims of race discrimination against the MPS in the past.
- Complaints not being handled properly after previous FAW complaints regarding discrimination.
- Unfair treatment of a FAW Advisor after they had highlighted discrimination of an officer in the FAW report.
- An ethnic minority officer felt that the failure to give him

opportunities consistent with his rank when his peers had all been given them was due to his previous complaints of discrimination.

Our detailed examination revealed that for some cases the evidence the MPS provided satisfied us that no unlawful victimisation had occurred. White officers, for example, were also dismissed for the same offence together with the ethnic minority officer who had damaged MPS property. In the case of the FAWA who had highlighted discrimination in their FAW report, we found no evidence that they had been treated unfairly.

In other cases we were unable to make a robust legal finding, on the balance of probabilities, that there was a link between how the individuals were treated and the fact that they had undertaken a protected act. We considered, for example, whether there might have been victimisation of an ethnic minority officer who had made past complaints of race discrimination. There was a failure to give this officer opportunities consistent with his rank when his peers had been given them. We could not conclude that those denying the officer opportunities did so because of his past complaints of discrimination.

The combined factors of the need for proportionality in our investigation and the Commission's finite resources limited our ability to comprehensively investigate the motivation and cause of the apparent detriment experienced by individuals in this and other cases.

In order to do this it would have required the Commission running a quasi ET process for each of the cases we assessed, including witness interviews with everyone involved in the cases.

## Statistical work

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One aspect of potential victimisation that we considered was whether individuals who have made FAW complaints of discrimination are then victimised by being subjected to disciplinary proceedings themselves. We decided to assess this through our statistical work because several individuals had highlighted this in interviews.

We commissioned ISR to look at this one aspect of victimisation.

ISR's analysis looked at those who made a FAW complaint, to see if they were subsequently more likely to have been the subject of a misconduct allegation. There was a statistically significant result showing that an individual would be 4.2 times more likely to be subject to a misconduct allegation, if they had raised a FAW complaint in that year or the previous one. Annex 9 provides more detail about our statistical work.

Because of the way in which the summary data is recorded on the MPS systems ISR were unable to tell the exact date of when a FAW complaint had been raised. This did not allow ISR to say with certainty which came first; the FAW complaint or the misconduct allegation and because of that whether one thing consistently led to the other. Because of this they were unable to prove or disprove that there was a link between the two processes.

## 6. The expectation of victimisation

### Introduction

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In the previous chapter we considered whether unlawful discrimination occurred. In this chapter we look at the widely held expectation within the MPS that if you make a complaint of discrimination you will be victimised.

### Finding

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- ix. There is a clear expectation amongst staff and officers that if you make a complaint of discrimination you will be victimised. This expectation of victimisation prevents people making complaints and limits the MPS's ability to tackle discrimination. The police culture of supporting loyalty could encourage behaviour that could be perceived as victimisation and this is counter to the Police Code of Ethics.

### The expectation of victimisation

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As an employer the MPS has a responsibility to ensure that its internal complaints procedure is effective. In order for a complaint procedure to be effective, the first step is making sure that individuals who feel that they have experienced discrimination will make a complaint. Individuals need to be confident that their complaint will be handled fairly, and that there will be no negative consequences.

The College of Policing's Code of Ethics (July 2014) <sup>27</sup> is a Code of Practice and sets out the Standards for Professional Behaviour, of which 'challenging and reporting improper conduct' is one. This Code of Practice sets out that police colleagues 'will report, challenge or take action against the conduct of colleagues which has fallen below the standards of professional behaviour' and that police

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<sup>27</sup> <http://www.college.police.uk/What-we-do/Ethics/Pages/Code-of-Ethics.aspx>

colleagues have 'a positive obligation to question the conduct of colleagues that they believe falls below the expected standards and, if necessary, challenge, report or take action against such conduct'. If individuals are not confident in reporting discrimination, then they will fail to adhere to this requirement under the Code of Ethics.

The consequences of victimisation by a police force may also be more serious than for any other employer because of the powers available to them. These include, for example arrest and surveillance. Cases have been reported in the media where officers who have made complaints of discrimination have been arrested. Even if the arrests were justifiable by standard police operating procedures, this heightens any perceived risks of complaining.

The MPS's history of cases such as Howard and Lichters, where unlawful discrimination has occurred, entrenches this expectation within the minds of those considering making complaints. Ms Howard was awarded aggravated damages, in part because of the MPS's 'insulting, malicious and oppressive' conduct.

Mr Lichters' ET judgment identified that the MPS had destroyed the claimant's character.

#### **Quotes from Lichters' judgment on victimisation**

'In our judgment, the Respondent either set out to, or were reckless about destroying the Claimant's character because he had brought a complaint of discrimination against them, because he had alleged that Inspector Jenkins, who was a popular officer, had made a homophobic remark to him, because he named a number of senior officers within the Unit and because rumours about him had been perpetuated for so long and among so many officers, they were now believed to be fact.'

And

'It is our judgment that the Respondent did victimise the Claimant in the way that the Fairness at Work investigation was conducted, the report written, disseminated and in the refusal to allow him to appeal.'

The expectation that people making complaints would then be victimised was consistently raised during our interviews, both with individual police officers and staff and with senior staff and officers at the MPS. A common phrase of our interviews with individuals was the feeling that making a complaint would be 'putting your head above the parapet' and that unwanted consequences would follow. Individuals who have been too fearful to talk to us in person about their cases have contacted us anonymously. This fear of victimisation cuts across both the FAW and the DPS process.

#### **Quotes regarding perceived risk of victimisation**

'So individuals are living, if you like, in a culture of fear of raising their head above the parapet because if they do then they might as well consider leaving their career behind or not going to get promoted or they will be disciplined through no fault of their own other than having the courage to say actually this is wrong ...'  
(Ethnic minority officer)

'I personally would never have chosen to take out a Fairness at Work against a white officer based on the fact that I've been discriminated against because of my race. It would be virtually impossible to prove and all it does is worsens the situation. And it's really an issue of last resort for most officers.'  
(Senior ethnic minority officer)

Staff and officers who expect that this type of victimisation may take place are much less inclined to complain about any type of discrimination because of the risk of an impact on their day to day work and their progression.

The Acas staff survey found a widespread perception of victimisation when a person makes a FAW (56 per cent), especially if it is related to a protected characteristic (72 per cent compared to 49 per cent if not related to a protected characteristic). This was 'most intense' among ethnic minority complainants (66 per cent) and where the complaint related to ethnic background (84 per cent).

## Police culture

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The role of policing results in supportive teams and loyalty to team members necessary to carry out difficult public-facing tasks. This culture along with a tendency to 'look after your own' can have the consequence of encouraging and supporting victimisation of those who challenge their own team by making a complaint of discrimination against another team member. The Chapman report highlighted the negative connotations of 'small team loyalty or loyalty to the colleague or force outweighing loyalty to either values or the public' stating that 'There have been too many examples where this expectation [for the highest level of ethical and professional standards] has not been achieved. Either because of failures in supervisory behaviours, lack of interventions, organisational culture, or in circumstances of small team loyalty or loyalty to the colleague or force outweighing loyalty to either values or the public, there has been a perception of wrongdoing – and also a perception of a lack of accountability when this wrongdoing occurs. Loyalty is one of the most common factors in most models of business ethics. It may seem surprising that loyalty is an omission in the police Code of Ethics: surprising, but understandable given the negative connotations which it can engender. Loyalty is a value the police hold. If there is no future alignment between values and culture one may not proceed to a new model of discipline.'<sup>28</sup>

Individuals told us of senior officers 'sticking together' in dealing with complaints and that a negative reputation can follow an officer to a new team, because they have complained about discrimination. This was echoed in the Acas FAW staff survey: 'At its most critical, this amounts to a perceived culture of senior officers sticking together and brushing internal complaints aside in an atmosphere conducive to bullying and harassment.'<sup>29</sup>

The College of Policing's Code of Practice the Police Code of Ethics<sup>30</sup> sets out clearly that as an example of delivering 'equality and diversity, officers should "take a proactive approach to opposing discrimination so as to adequately support victims, encourage reporting and prevent future incidents". Any victimisation of colleagues for making complaints of discrimination would be in direct conflict with this.

### Quotes taken from interviews with individuals

'...a term often used that if you put your head above the parapet

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<sup>28</sup> Chapman Report (2014), para 1.9.

<sup>29</sup> Review of Fairness at Work Report by Roy Lewis and Acas report, para 125.

<sup>30</sup> <http://www.college.police.uk/What-we-do/Ethics/Pages/Code-of-Ethics.aspx>

then they will go for you and I think that a lot of what I've experienced is being labelled, being stigmatised, people saying that I'm difficult to work with... I had to laugh when I first heard that. That was quite shocking because it's quite the opposite. I'm one of the easiest managers to work with, most supportive...'

'...it's widely accepted within the Metropolitan Police Service that this [the FAW] will be the last resort of anything, and when taken by then you have more or less lost all faith in the service anyway, and you will be victimised by that stage. That's been highly accepted by very senior officers.'

It was notable that even amongst those who felt they had been discriminated against they still reflected a strong sense of loyalty to the MPS and pride in their work, even when they felt their career had been negatively impacted by making a FAW complaint or reporting misconduct.

## **Impact of the expectation of victimisation**

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This expectation of victimisation is very damaging. It prevents people coming forward with complaints and therefore prevents the MPS from taking action to tackle problems within the organisation. Making a complaint is seen as something you do only when you have no other options, rather than something that you should do to help improve the service.

## **The MPS's perception of victimisation**

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### **The MPS acknowledge the widespread perception of victimisation**

'We also fully accept that some of our staff and officers believe they have suffered victimisation as a result of raising a grievance and in some cases this has proven to be the case. We do have

policies and procedures in place designed to avoid this happening, and to respond robustly if it does. However, the results of the Acas survey are compelling and we will listen to this feedback and respond.’ (MPS Director of People and Change Robin Wilkinson)

‘There are perceptions of unfairness. There is undoubtedly a perception of unfairness that has built up over the legacy and the history of the organisation. On the other side, among those who are managing and supervising, who are not black staff, there is, to a degree, a nervousness or reticence to find themselves in a position where there is potentially an allegation against them. All of that builds, often, to a potential reluctance to try to deal informally with the situation, because the inference that comes from informally dealing is that you are trying to sweep these issues under the carpet.’ (MPS Assistant Commissioner Martin Hewitt)

Following the Acas review, the MPS have said that they will take forward all of the recommendations made by Acas. In the FAWDC action plan resulting from the Acas review the MPS have committed to making changes in their processes.

‘We are incredibly open at trying to deal with this, but, as I said at the outset and particularly in relation to race, there is a perception in the organisation of unfairness.’ (AC Martin Hewitt)

## What has happened since the investigation timeframe

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The MPS referred the Howard case to the IPCC in 2014 and an MPS investigation supervised by the IPCC commenced. The investigation is still on-going, meaning that two years on from the case no one at MPS has been held responsible for conduct relating to her complaints. We would hope that whatever the outcome of the investigation the MPS will take the opportunity to communicate a strong message that they take allegations of victimisation seriously and that such practices will not be tolerated.

In response to the Acas review the MPS has introduced changes to the FAW SOP in order to tackle victimisation. These planned improvements cover the FAW process and the misconduct process but not where complaints of discrimination are raised in

other processes, for instance the request for flexible working process. While the MPS FAWDC action plan addresses procedural issues it is less clear how it will address the wider cultural change that is required within the MPS to support and encourage those who feel that they have experienced discrimination to complain without the fear of victimisation, and to make clear that the MPS values complaints as a mechanism for addressing problems and improving performance.

## Recommendations

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- xi. The changes carried out in response to the Acas report are insufficient. The MPS needs to take action to tackle the expectation of victimisation. This could include further analysis to assess whether there are links between making complaints of discrimination and acts of victimisation such as being prevented from promotion or training opportunities.
- xii. As part of the MPS's work on culture and ethics, the MPS needs to make clear the expectation that those who make complaints of discrimination should be supported to have their cases assessed through the formal processes. Dealing with cases effectively and taking action if people do discriminate, is a vital part of police ethics. The MPS needs to make it clear to officers and staff that complaints are an essential part of improving both the experience of colleagues within the organisation and the service that they offer to the community.

## 7. Confidence in handling difference and diversity: The MPS and police culture

### Introduction

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Much of the MPS's action plan in response to the Acas report focuses on changes to guidance and processes. This is welcome but this does not, in itself, change culture. For the changes introduced by the MPS to work it is not only necessary to look at the regulatory framework but also the culture across the organisation. This includes the confidence, skills and abilities of managers to handle difference, diversity and difficult situations. Providing training to officers, staff and managers on handling difference and diversity can have many benefits including improving their skills and confidence in relation to diversity. We looked at what the skills and confidence were and what training occurred during the timeframe of our investigation.

### Findings

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- x. Some managers lack the skills and confidence to handle difficult situations, particularly where these relate to diversity. This lack of confidence in handling difficult situations is particularly evident regarding race.
- xi. The training for staff, officers and managers that was being delivered by the MPS in the time period of our investigation gave insufficient focus to diversity.
- xii. The provision of training in the timeframe of our investigation for FAWAs, who have an important role in relation to discrimination complaints, was insufficient and inconsistent.
- xiii. The DPS (who have a central role and also deal with all public complaints that come into the MPS) does not always correctly identify cases of discrimination, especially where it is less overt.

## **Lack of confidence of managers in handling difference and diversity**

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Staff, officers and senior managers at the MPS consistently told us about a lack of confidence among managers when they have to handle internal problems which involve difference, particularly race. This has been a persistent theme for the MPS across other previous reports and the Police Service as a whole.<sup>31</sup>

### **The MPS's painful history with race**

'You cannot overstate how much the issue of managing issues of discrimination within the organisation is riven through everything that we do, because we have had such a painful history. That is the reality. Openly and publically, we have had a very painful history, and I cannot think of any other organisation that has been in such a position.' (AC Martin Hewitt)

Evidence from our interviews with officers and staff highlighted that managers are fearful of performance managing ethnic minority officers, for fear of being accused of being racist. Avoiding the issue can lead to future problems if the individual officer is later properly managed and performance issues are raised. It can lead to complaints of discrimination as an individual may not understand why, after they have previously had no performance issues, their performance is now being addressed. In the most extreme cases this can result in them making multiple complaints that can clog up the FAW system.

'The last three out of six FAW complaints that I have had have been discrimination. When I have spoken to the line managers there has been, in one case, 20 of them. Twenty different people had tried to manage this person. When I contacted them, they said 'No! Please do not speak to me again about this person.' They said they were the most impossible person I had ever tried to manage in my life. They had bent over backwards to accommodate.' (Quote from Professional Standards roundtable)

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<sup>31</sup> Taylor (2005) and Chapman (2014) reports.

Borough Commanders and managers told us that they have seen examples where complaints have been made by individuals to get back at managers or to instigate a desired move to another team.

‘For me, one of the issues in the current system is the abuse of the process. I have come across quite a few cases where people are just using the system to have an attack on the management, basically. Then they take it further and have five or six months off sick. I find it quite frustrating being the Borough Commander in charge of reducing sickness as well.’ (Quote from Borough Commander workshop)

## Confidence in handling complaints of discrimination

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Managers, police officers and staff all reported to us particular concerns about handling complaints of racism and to a lesser degree sexual orientation. This was described to us as a ‘hierarchy of discrimination’.

‘You can be ageist still and nobody bats an eyelid really about it, and you can still be a little bit sexist and nobody bats an eyelid about it, and probably a few homophobic comments let go fly. I am not saying any of this is right but we all know where we stand on race. That does not help matters either, that hierarchy of discrimination that plays out at every single level within the organisation.’ (Quote from Professional Standards roundtable)

‘As soon as race is mentioned there are so many different barriers and people worried about certain things. It creates a whole wealth of work when that is quite often not needed. The same principles apply, but because race has been thrown in people get worried about, “Am I doing this properly and thoroughly? Do I need to dot every ‘i’s’? Do I need to take extra statements?”’ (Quote from Borough Commander roundtable)

## Equality and diversity training for all staff and officers

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We assessed whether training provided by the MPS in relation to equality and diversity was adequate and addressed issues in relation to discrimination complaints.

### During the timeframe of our investigation

#### *The provision of basic training by the MPS for staff and officers*

In the MPS workshop in November 2015 regarding their Equality and Diversity Learning and Development we were told that the equality and diversity elements of the Initial Recruit Training programme were not always delivered as trainers were frightened of delivering this element of the training. Because it wasn't mandatory it wasn't always covered properly. The MPS's equality and diversity e-learning, although mandatory, has been described to us as a tick-box exercise. Individuals told us that it needed to be 'brought to life', for example, with practical and relevant video case studies or face-to-face training. Borough Operational Command Unit (BOCU) Commanders told us that they felt they could deliver some face-to-face training with current resources and by using the BOCU training and development days.

Our analysis echoes the Acas review's concerns about the adequacy of equalities training, which states that<sup>32</sup> 'The review examined the NCALT<sup>33</sup> package on the Equality Act and related issues. It seemed to be a useful source of information to contain scenarios relevant to the work experience of police officers and staff. However, based on the interviews with interested persons, MPS personnel were decidedly sceptical about the utility of this package, which they saw as a kind of tick-box mechanism that did little to embed equality in the organisation.' At the training workshop in November 2015 the MPS stated that between June 2008 and January 2014 there had been 46,282 completions of the basic mandatory training. Only around 3,000 individuals completed the advanced discretionary training, which provided further detail on the six protected characteristics. Much of this additional detail would have been relevant to all personnel.

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<sup>32</sup> Review of Fairness at Work Report by Roy Lewis and Acas, para 164.

<sup>33</sup> National Centre for Applied Learning Technologies (NCALT) a national online police training tool.

### ***Training for line managers in managing difference and handling discrimination***

We were told in interviews that line managers do not feel adequately trained to deal with and manage discipline and grievance issues. This is a problem as this is an important part of their role. Most of the training we have been told about that is provided by the MPS in relation to diversity relates to officers only and not staff managers, who account for more than 40 per cent of line managers.

Training on leading difference, including unconscious bias training, was part of the 2014 Commissioner's Leadership Programme (CLP). This was delivered to all sergeants and inspectors but it was not provided to staff managers. Although the CLP was developed for staff it was only included in a staff development day.

'We do not give them any tools, really. We say, "It is all on the People Pages. If you have any problems, it is on People Pages – or you can phone 1555 and speak to someone who will fill in a service request, which does not answer your concerns. I usually default to going back to our old strategic HR manager, who left our department some time ago and ask her advice as a favour.'

(Quote from Borough Commander roundtable)

'So if we talk about it in purely monetary terms there has to be a value to getting people to manage a problem because we have got some bloody awful managers in this organisation I tell you, we really have.' (Quote from a HR staff member)

### **Outside the timeframe of our investigation**

Leading for London was a 2015 pilot leadership training programme delivered to all officers and staff and tailored to the rank and grade in seven BOCUs and specialist units. We were told by the MPS at their presentation on training and development that they hope that it addresses the concerns about the lack of staff management training and that the interim evaluation included positive feedback on the chance to discuss and share issues, for example, regarding difficult conversations.

## **Training for FAW Advisors and ‘High Touch’ Advisors**

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The role of a FAWA is to carry out a review of the facts of the complaint. They have the remit to interview the people involved, gather information and put forward a possible resolution. This is a responsible role and can be pivotal to the success of a FAW complaint. Yet people are asked to volunteer to take on this role and no previous specialist knowledge is required. When the FAW process was introduced in 2006 there was a five day training course for the new FAWA and the FAW Appeal Advisors (FAWAA). This initially substantive training was discontinued and there was little formal training for FAWAs during our investigation timeframe.

Since the initial training any new FAWAs have spent up to a day with the central FAW team. Several FAWAs told us in interviews that their understanding of discrimination and equalities had more to do with their HR or professional background than any formal training. Many FAWAs saw this as part of their professional development, stating that they made a point of keeping up to date with legislative changes and good practice because of this. Evidence from individuals was of a lack of refresher training regarding changes to the law and FAW process. This was compounded by the small numbers of FAW complaints that a part-time FAWA might deal with in a year, with few of these relating to discrimination. In the past, workshops had been run by the central FAW team and the Directorate of Legal Services (DLS), but these had ended. For FAWAs based in the central team the lack of formal training was, to a degree, offset by working closely with other FAWAs and having regular team updates and meetings.

### **Since the start of our investigation**

A team of six external ‘High Touch’ Advisors was introduced and trained in 2015 to deal with FAW complaints which were complex or included potential discrimination. The initial feedback has been very positive as these advisors have addressed some of the concerns about the independence of FAWAs. It was felt that they have had the knowledge and skills to identify and address potential discrimination, including indirect discrimination, and have been dealing with FAW complaints more quickly.

The Acas review recommendations clearly set out what training, including refresher training, is expected for the different categories of FAWAs, HR managers and their suggested Single Points of Contact (SPOCs) in BOCUs. New part-time FAWA have been recruited and will pilot a 2-3 day training course that will then be expanded to all existing FAWAs.

## PSCs and leads

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The role of a PSC is often given to senior staff and officers within the MPS who are identified as having positive experience in dealing with difficult situations and have shown good communication skills. They may not have the detailed understanding required of discrimination issues or the grievance and disciplinary processes and they take on the role in addition to their day job. Each borough has a PSC and a PSU, which manages public complaints and misconduct matters.

PSCs and people working in the PSU told us that there has been limited training and support on diversity and discrimination for the local PSUs and PSCs since the Taylor reforms training in 2010. One PSC referred to it as a 'learn as you go approach'.

There is variation as to how PSCs and PSUs carry out this role and positive practice is dependent on the knowledge and commitment of the individual PSCs. For example, one runs workshops for the BOCU team of investigators and advisors. Another PSU has run prevention and learning training.

'Resourcing is an issue. I'd like to get to the point where I can transfer some organisational learning and I can think about training days, because I have got responsibility for training as well, but I cannot. I am so busy firefighting. This is on top of my day job. 150 per cent of my work is professional standards, so this is on top of all the other stuff I do. Actually you just do not get to that other stuff. You are never going to resolve the problem because you do not get to the organisational learning, you do not get to the training. You do not get to it.' (Quote from Professional Standards roundtable)

## The DPS

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The DPS has a central role and deals with all public complaints that come into the MPS. They also deal with any conduct issues concerning officers. They undertake severity assessments to decide whether a complaint is to be dealt with as misconduct or gross misconduct, or whether it is returned to the borough to be

resolved locally or whether it requires no further action. They also have oversight of any conduct matters that concern staff.

The Howard and Lichters cases highlighted significant issues in the way DPS had handled cases where discrimination had been clearly identified. Evidence from reports such as the Savran report<sup>34</sup> and our interviews indicated that discrimination is often perhaps now less overt, particularly regarding racism. The perception is that this can present itself in different ways, for instance in the blocking of promotion applications and training opportunities. If this is the case then it could make identification of discrimination more challenging.

The IPCC Report<sup>35</sup> on the MPS's handling of public complaints of alleged race discrimination found that the investigating officers did not explore indirect and less overt racist behaviour or language effectively and that they required training. Evidence to our investigation was that most discrimination cases are not clear cut and it is often down to one person's word against another.

The Acas review also found that assessing allegations of discrimination where there wasn't clear-cut evidence was a problem for the MPS. The report said that 'outside of the most blatant cases of racial, sexual or homophobic abuse – allegations of discrimination normally do not involve clear-cut evidence but rather conflicting evidence that has to be carefully assessed on the balance of probabilities in the light of witness credibility and previous history. Subtleties of this nature are not DPS's strongest suit.'

During the timeframe of the investigation much of the training has focused on the central DPS team. The make-up and function of this team changed within our timeframe. How effective this training has been must be viewed in light of our concerns.

Since late 2014 there has been investigator training for the Serious Misconduct Investigation Unit (SMIU) and professional standards seminars for PSU staff, which covered discrimination.

## After our investigation timeframe

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In response to serious concerns raised, for example by the IPCC<sup>36</sup> report, the SMIU now shares good practice on discrimination cases with the PSCs. The setting up of a

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<sup>34</sup> Savran, Metropolitan Police Cultural Audit Report 2014.

<sup>35</sup> IPCC, Report on Metropolitan Police Service handling of complaints alleging race discrimination, July 2013.

<sup>36</sup> IPCC, Report on Metropolitan Police Service handling of complaints alleging race discrimination, July 2013.

specialist unit in the SMIU alongside training for them and all staff dealing with discrimination issues may address these concerns but that is dependent on the MPS establishing an ongoing programme of training and central support to PSCs to develop their own teams.

## Staff associations

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The MPS has clear frameworks for engaging with the Police Federation, unions and staff associations and meets with them regularly. The MPS says it is committed to these meetings and has a business partner dedicated to employee relations. Staff associations play an important role and could help the MPS to increase understanding of difference and diversity yet offers that have been made by staff associations to support MPS training have not been taken up, according to our evidence. We have heard in interviews of some positive reports of the impact of these groups, for example in dealing with issues early and stopping them being raised as complaints, but this can depend on the relationship between them and the Borough Commander and decision-makers at a local level.

## Recommendations

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- xii. The MPS should strengthen the management skills of its officers and staff, especially in handling difficult situations and improving their confidence in dealing with race issues. This will help to reduce the risk of poor management which risks leading to a perception of victimisation.
- xiii. In addition to the training identified in the MPS's FAWDC action plan the MPS should establish a formal network of Professional Standard Champions (PSCs) to provide regular training on equality, diversity and handling complaints, and to support each other in their roles. PSCs should be consulted to ensure that this addresses their concerns.
- xiv. The MPS should establish a support network for FAWAs. FAWAs should be consulted to ensure that this meets their needs.
- xv. MPS should monitor the effectiveness of training implemented as part of its FAWDC action plan in response to the Acas report.

## 8. The MPS as a learning organisation

### Introduction

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One of our early concerns was the failure of the MPS to apologise to Ms Howard in the media statements they released after her ET case. When an ET makes negative findings there should be an emphasis on ensuring the same failures do not happen again. It was a specific part of our terms of reference to consider ‘whether the steps taken by MPS subsequent to cases investigated have reduced or eliminated the risk of unlawful acts and omissions occurring’.

Given the prominence of the Howard ET we would expect the findings to be quickly shared. We also considered the MPS’s processes for ensuring learning on employment law and sharing learning from ETs.

In order to continuously improve, an organisation needs to regularly review performance data so as to identify any problems, implement solutions, and evaluate the effectiveness of the solutions introduced. Therefore we also considered what use MPS made of its complaints data to improve both its general SOPs and the handling of complaints.

### Finding

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- xiv. While the MPS has structures in place that would enable them to share the learning from ETs (including cases that are won, lost or settled, FAW and other cases, it is not clear that this is being done consistently. Borough Commanders told us that they have an appetite for more information and sharing of learning so that they can improve performance where it is necessary and not repeat previous mistakes.

## Sharing learning from the Howard ET

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The Howard ET case was a high profile case. Given the media coverage and the significance of the findings the MPS should have shared what happened quickly with their most senior staff and officers. We spoke to Borough Commanders just over 12 months after the Howard remedy judgment, and they reported that they had gained their knowledge about the case from the media reports. Senior managers were not briefed about the ET recommendations in Ms Howard's case nor on how the MPS planned to address the recommendations. This would have been beneficial in helping to embed the lessons to be learned at an early stage to address the concerns and recommendations from the case. Information provided to senior managers may have been provided months after the judgment came out and did not explicitly refer to the case because of its sensitivities. Although it may not be realistic for the MPS to agree what organisational changes are needed immediately after complex cases like Howard, it should be possible for the MPS leadership to communicate to senior managers, within a few days, relevant ET recommendations and a reassurance that plans on how to address and implement them are being developed and by whom.

'There are opportunities to learn more, Met wide. I know Tribunal settlements are very sensitive and only so many bits from it can be shared, but I know we are here as a result of Carol Howard. I probably know most about that from the media than my own organisation. Maybe we are still working on that narrative, but could I be learning from that right now in terms of how I am applying decisions locally?' (Quote from Borough Commander workshop)

Where any ET or other (e.g. Police Disciplinary Tribunal) judgment recommends significant changes to the MPS's practices, we would expect the MPS to quickly share important extracts of the judgment and to share organisational learning with senior managers. This will help to ensure that lessons are learned and the problems

identified in the case are addressed within the MPS. It will also demonstrate the MPS's commitment to tackling inequality and unfair treatment within their workforce.

## **Identifying and sharing learning from ETs and other complaints**

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The MPS told us that updates on general strategic issues are communicated through two main mechanisms. The first of these is 'The Brief'; a weekly email sent to 750 senior leaders within MPS. General updates on employment law are circulated through the Directorate of Legal Services Employment Newsletter which is produced approximately bi-monthly.

We received evidence about the role of an Organisational Learning Sergeant in the ET Unit who identifies learning from ETs. This role also identifies and collates learning on a wide range of issues such as deaths in custody, inquests, civil actions, misconduct. The learning is disseminated to Gold Group decision-makers, usually Chief Superintendents. The Organisational Learning Sergeant also collates all officer organisational learning from disciplinary hearings.

The Prevention and Reduction Team (PART) is part of the DPS and liaises with the Organisational Learning Team to identify suitable learning for dissemination via presentations or other media. They also engage with all OCUs as part of a Complaint Intervention Scheme. PART and OCUs identify any trends in complaints.

Additionally, a FAW Co-ordinator is responsible for sharing organisational learning taken from FAW complaints through sending a collective email to Borough Commanders with this information.

Despite the MPS having these structures and roles in place interviews with Borough Commanders, Professional Standards Leads and other managers indicated that this learning did not appear to be being shared consistently across the organisation.

Borough Commanders suggested to us that greater focus could be given at meetings that they already attend such as the monthly 'Crime Fighters' meetings. This could be used as an opportunity to develop issues and learning from ET cases. This would support wider learning of lessons within the MPS following ET judgments.

### **Quotes from the Borough Commanders workshop**

‘At the moment, the organisation needs to decide what is important. Is it just a pure performance figures drive, which is what we have had under various guises over the last four or five years, or is it an opportunity, when you have all of your senior leaders together for a day, to invest and flip the agenda on its head and actually say that we will use part of that agenda for development opportunities?’

‘If this is that important to the Met, once a month there could be a half hour update on HR type issues, be it some form of learning or something else?’

‘It is the organisation saying, “This is important to us.” Therefore, within the existing meeting structure we have, we are now going to prioritise this and give you some form of continuous professional development as senior managers and senior leaders by equipping you with some lessons learned that you can take back and cascade to your staff’

## **Learning from mistakes**

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In order for an organisation to learn and progress it has to first acknowledge where mistakes have been made. When the Commission received evidence about how the MPS had handled complaints of serious sexual assault made by two female officers against a male officer in their team, it raised concerns that in this case mistakes made had not been acknowledged. These cases revealed failures in the way that they were handled by the MPS and they did not follow the SOPs in place at that time. Although the male officer concerned was eventually dismissed for gross misconduct because of these assaults, for a significant period of time after reporting the incidents the women who had been assaulted did not get the support and professional treatment routinely given to members of the public who report sexual assault.

For many months, the MPS did not appear to have acknowledged to the women or their representatives that mistakes were made in handling these complaints. During an interview with the Commission one of the women stated that she had written to

the Detective Chief Superintendent managing the DPS at that time asking for his reassurance that this would never be allowed to happen again. She states that she never received a reply to her request. The Detective Chief Superintendent retired shortly afterwards.

It is notable that during our investigation the MPS's initial response in relation to these cases was to defend their behaviour, rather than accepting that mistakes were made and identifying learning. The MPS had asserted that because a live civil action case regarding this complaint was taking place at the time of our investigation this had prevented them from acknowledging any mistakes that may or may not have been made regarding the handling of these two cases.

The MPS have since provided the Commission with evidence from other cases of sexual assault by MPS personnel on MPS personnel where the correct process and policies had been followed. They also initiated an independent review of the handling of these cases and just prior to the publication of this report they were able to share with us the recommendations that have been made and implemented following on from the independent review.

## **Using data and evidence to improve performance**

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The MPS is a large organisation with a potential wealth of data and information that could help it improve its performance on diversity and handling complaints of discrimination. Using hard evidence from complaints data would enable the MPS to identify problems, devise effective solutions, and monitor the effectiveness of these solutions.

During the investigation the MPS shared two statistical reports with us, referred to as the Diversity Health Check. The first was produced in November 2014 with a follow-up briefing in January 2015. The scope of this analysis was quite broad and looked at issues of ethnic minority and gender representation in the force as a whole. Sections of the report looked at the FAW, ET and DPS procedures. Various stages of these procedures were analysed to establish if there was any disproportionality in outcomes.

A key finding was that ethnic minority officers were almost twice as likely to be called to misconduct meetings or hearings. Further analysis of data and evidence on complaints about discrimination could help the MPS to identify why this is happening; improve performance and help to increase the diversity of its staff.

However analysis such as this is dependent on the quality and availability of the underlying data.

Even with the MPS's full co-operation, there were challenges and delays in getting the evidence we needed to conduct a robust analysis of matters covered in our investigation terms of reference. One reason for this is that the MPS hold police and staff records in three different systems. There is one system for personnel data, one that records FAW complaints and a further system that the DPS operate which records all external complaints and internal conduct complaints.

This points to a potential weakness in their record keeping that may limit the quality of analysis that the MPS can run. This needs to be addressed by the MPS through improving its collection, recording and collation of data.

In chapter 7, we set out the difficulties that we had in reaching conclusions during our investigation due to problems with the MPS data summaries. These same issues would apply to any analysis that the MPS conducted. In addition the numbers of complaints identifying sexual orientation discrimination were not sufficient for analysis. MPS reported a 47 per cent return rate on sexual orientation self-declaration. When asked to provide the Commission with evidence on any actions taken to improve the self-declaration rate stated that they had done significant work to try to increase the level of self-declaration across a range of protected characteristics through regular communication.

Improving its data collection and record-keeping to address the issues identified in chapter 7 would enable the MPS to conduct further analysis which could identify problems relating to diversity issues, the handling of discrimination complaints, and to also report on improvements as a result of their FAWDC action plan.

Further analysis could also help challenge staff and officer expectations of victimisation. More detailed statistical analysis, similar to the analysis ISR carried out for the Commission, could be undertaken to prove or disprove some of the concerns regarding victimisation that were raised with us. For example, does making a complaint of discrimination limit an individual's access to training opportunities, or promotion opportunities?

## **The impact of targets**

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Key to improving performance is the impact of setting targets. Our analysis of evidence has identified that the MPS was given a clear focus to meet certain

performance targets, such as those set by MOPAC. These targets focus on service delivery and not internal measures, meaning a similar level of focus is not given to issues such as handling of internal complaints.

One of the targets set for the MPS in the Police and Crime Plan 2013 - 16 was to increase public confidence by 20 per cent. MOPAC reported in March 2016 that the MPS were in danger of missing this target.<sup>37</sup> We are not aware of any updates by MOPAC on this target since March 2016. Cases such as Howard and other high profile ET cases are damaging to public confidence in policing. The MPS would benefit from a greater focus on improving how it deals with internal complaints.

## Creating a culture of continuous improvement

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In order to move an organisation forward, it is vital that reforms are sustainable, and build on those that go before. The MPS's FAWDC action plan makes substantive commitment to change. However it appears that changes introduced following previous reports have not always been sustained. Previous reports have raised issues with the complaints procedures. We have identified where some improvements were introduced to improve the MPS's complaints procedure, including the introduction of FAW Advisors was in response to the Morris report.<sup>38</sup> However, there appears to be a failure to consistently sustain positive developments and learning. A clear example of this is that many of the actions being taken in response to the Howard case are, at least in part, reinstating what has been removed from the FAW process. For example, when the FAWA role was introduced following the Morris report, there was a clear training programme in place but this ended and is now having to be reintroduced. The support for handling complaints of discrimination had been provided centrally, was then decentralised, and now appears to be being handled centrally again. This is summed up by a DPS manager:

'We're great as an organisation at starting it up and saying 'do you know what we run workshops' and I remember sitting and delivering a presentation to these guys [FAWAs] and saying this is going to be one of a number of workshops that you're going to be privy to as a result of being a fairness at work advisor and after

<sup>37</sup> <https://www.london.gov.uk/press-releases/assembly/the-met-and-the-mayors-missed-policing-targets>

<sup>38</sup> The Report of the Morris Inquiry, An independent inquiry into professional standards and employment matters in the Metropolitan Police Service (2004).

that there weren't any.' (Quote from a DPS manager)

The MPS should have a consistent, long-term approach to how they handle internal complaints, how training is planned and delivered and how they record, analyse and monitor complaints.

## Recommendations

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- xvi. The MPS should review how its data is collected, stored, and retrieved and make the necessary improvements to enable them to undertake regular statistical analysis similar to the analysis produced for the Commission by ISR. This will help the MPS to identify trends and potential issues, including the outcomes of discrimination complaints and disciplinary action. This will also enable the MPS to measure progress through the implementation of its FAWDC action plan and tackle issues regarding the perceived risk of victimisation.
- xvii. The MPS should review the effectiveness of its organisational learning process from ETs and complaints and ensure that it is shared in a way that works effectively across the MPS.
- xviii. The MPS should take steps to improve the collection of self-reported data, particularly in relation to sexual orientation.

## 9. The agreed EHRC/MPS Outcome Achievement Plan

In November 2015, following on from the Roy Lewis and Acas 'Review of Fairness at Work' report, the MPS published an action plan, which was shared with the Commission. The Commission welcomes the commitments that the MPS have made to improving their internal grievance processes following on from the Acas review and report recommendations.

We acknowledge that there are findings and recommendations in the Commission's report that are being addressed by the MPS 'Fairness at Work and Discrimination Complaints (FAWDC) Action Plan'. An updated version of this Action Plan was shared with us in August 2016 and this is detailed in Annex 1.

To reflect the MPS's commitment to addressing both the Commission and Acas recommendations, the EHRC/MPS Outcome Achievement Plan focuses on the next steps that the MPS have agreed to undertake to address the remaining key concerns for the Commission.

The MPS have committed to undertaking these additional steps on a voluntary basis, and to monitor progress and update the Commission every six months on the progress being made to achieve these outcomes.

## **Outcome 1: An effective regulatory framework**

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As set out in chapter 5 it is clear that there needs to be reform of the regulatory framework and accompanying guidance. The issues with the regulatory framework that are highlighted in this report and in the Acas review apply to all police forces in England and Wales. The MPS is the largest police force in those countries, and given the depth of knowledge that they now have on this issue it would be appropriate for the MPS to take a leadership role.

Both the Commission and the MPS have been in contact with the Home Office and other interested organisations to discuss this issue.

### **Agreed next step:**

1. During the process of redrafting regulations following Royal Assent of the Policing and Crime Bill 2015-16 to 2016-17, the MPS will take a key leadership role in convening stakeholders (National Police Chiefs' Council, College of Policing, HMIC and IPCC) to help inform and advise the Home Office on where changes are required to regulations and accompanying guidance in the handling of internal complaints of discrimination.

## **Outcome 2: Monitoring progress, creating a dashboard of success measures**

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The FAWDC Action Plan, published by the MPS in November 2015 contains a significant amount of detailed improvement work. Following such a large improvement programme the Commission would expect a commitment to monitoring progress, including publishing data and information on progress and setting targets for improvement.

This work would enable the Commission and more importantly the MPS staff and officers to hold the MPS to account for their progress against the FAWDC action plan.

Creating a dashboard of success measures in relation to key issues that have been identified in this report could include for example:

- **Timeliness:** the time taken to resolve complaints (for both FAW/grievance and misconduct). In the case of FAW complaints, this should be in comparison to the timescales set out in the revised SOP.
- **Transparency:** satisfaction of individuals making complaints that they were kept up to date with progress of their complaint, in both the FAW and misconduct procedures.
- **Success of training and development:** managers' rating of confidence in handling diversity or difficult situations, individuals' confidence in dealing with diversity and difference.
- **Confidence in using procedures:** individuals' rating of their confidence that if they made a complaint it would be handled fairly.
- **Confidence of FAW Advisors and DPS staff in recognising discrimination;** FAWA and DPS's staff rating of their own confidence in recognising and handling discrimination complaints.
- **Quality assurance of key parts of the process,** for example the ability of FAWA's to identify potential discrimination.
- **The number of ET cases issued against the MPS.**

**Agreed next step:**

2. Within six months of the publication of this report, the MPS will agree with the Commission a 'measures of success' dashboard. This dashboard will then be updated annually. The MPS will publish this on their intranet and report back to the Commission at agreed stages.

### **Outcome 3: Improving data**

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The MPS have indicated that they are making considerable improvements to their data collection systems over the long term. In order for any dashboard to be a success, it is vital that the relevant data is collected to enable analysis by protected characteristic. This can be particularly challenging in relation to sexual orientation, as it relies on self-declaration.

**Agreed next steps:**

3. The MPS will ensure that the work to improve their data collection systems takes into account the need to analyse information by protected characteristic,

and to produce data in a way that enables the measurement of the dashboard measures.

4. The MPS will work with the Commission to select benchmarking organisations with regard to the collection of self-reported data. The MPS will work with selected organisations to explore options to improve the rate of self-declaration of sexual orientation. The MPS will report back to the Commission on progress after 12 months.

## **Outcome 4: Expectation of victimisation**

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As set out in chapter 8 there is a widespread expectation that if an individual makes a complaint, they will then be victimised for doing this.

As an employer the MPS needs to tackle any discrimination in the workplace. As a key part of this they need to ensure that anyone who feels that they have experienced discrimination is confident that they can make a complaint without fear of victimisation. We welcome the revisions that the MPS have made to their draft Grievance SOP which sets out clearly that individuals should not be victimised as a result of making a complaint.

However, the expectation of victimisation is entrenched and the Commission believes that it will take time, a consistent approach and different types of intervention to tackle it successfully. Interventions could include:

- Publication of positive case studies where individual MPS staff and officers have made complaints and gone on to have a successful career.
- Publication of positive case studies where a complaint has resulted in improved working practices.
- Strong statements from senior managers about the importance of raising complaints (demonstrating the MPS as a learning organisation) and strong, consistent messages that victimisation will not be tolerated.
- Ensuring that if victimisation is identified, the individuals responsible are held to account for their behaviour and that the consequences they face are communicated (anonymously) to the wider force.
- Undertaking further statistical analysis which may help to identify other less visible types of victimisation such as lack of promotion opportunities or blocks to training which in turn affect career progression.

It is vital that the expectation of victimisation is measured in order to demonstrate that the actions being taken are having a positive impact.

**Agreed next steps:**

5. Within three months of the publication of this report, the MPS will prepare a plan to tackle the expectation of victimisation within the MPS and share this with the Commission.
6. The MPS will survey their officers and staff 12 months and 24 months after the completion of this action plan to measure impact. Findings will be shared with the Commission and if necessary further actions will be taken to tackle the expectation of victimisation.

# Annex 1: Fairness at Work and Discrimination Complaints Action Plan

Updated version shared with the Equality and Human Rights Commission 18 August 2016

Activity	Delivery Date
<b>Statutory Framework</b>	
1. DLS to commence consultation with the Home Office on how changes to the statutory framework may enable more effective management of discrimination complaints raised as grievances.	<b>Delivered –</b> December 2015
2. DLS to meet with IPCC to discuss the implications of the Professor Lewis/Acas report.	<b>Delivered –</b> December 2015
3. Roundtable discussion between the Home Office, the Equality and Human Rights Commission, IPCC, HMIC, GMP, NPCC and College of Policing using real-life case studies to highlight need for reform.	<b>Delivered –</b> June 2016
<b>Policy and Practice</b>	
4. Gold Group continues to operate, chaired by Director of HR. All new discrimination complaints, ongoing cases and	<b>Ongoing</b>

senior clients appointed to oversee high risk cases.	
5. HR to establish new process for allocating FAW advisors which will ensure that discrimination complaints are managed by centrally held and appropriately trained resources.	<b>Delivered</b> – December 2015
6. HR and DPS to review current policies and practices to strengthen our response to complaints of victimisation.	<b>Ongoing</b>
7. HR to write new FAW policy and standard operating procedure capturing all areas of recommended reforms. This will include changes to terminology, stronger sanctions for victimisation, and new time limits as specified in the Professor Lewis/Acas report.	<b>Delivered</b> – July 2016
8. HR to implement new framework for recommendations arising from discrimination complaints which will set out which decisions/recommendations can be taken at B(OCU) level and which require oversight at a more senior level.	<b>Delivered</b> – July 2016
9. HR to implement changes to quality assurance processes as set out in the Professor Lewis/Acas report.	<b>Delivered</b> – April 2016
10. HR to review the current process of ‘referring out’ matters raised through FAW where there are existing appeal mechanisms, to ensure that complaints of discrimination are being dealt with appropriately.	<b>Delivered</b> – April 2016
11. HR and DPS to develop new governance structure for the management of complaints of discrimination.  This will describe the roles and responsibilities of individuals at all levels of the MPS and will in time replace the existing Gold Group structure.	<b>Delivered</b>  Ongoing
<b>Role of HR and DPS</b>	
12. Use of dedicated external and internal FAW advisors to deal with matters of discrimination and victimisation to be costed by HR. Temporary model of existing independent	<b>Delivered</b> – January 2016

advisors to be evaluated and extended.	
13. DPS to establish a dedicated team of investigators in SMIU to deal with all complaints of discrimination or victimisation.  Role holders to receive training appropriate to their role.	<b>Delivered</b>  Ongoing
14. HR to deliver new telephone advice line for officers and staff who wish to raise complaints of discrimination or victimisation. Face to face meetings will be offered where appropriate. Service to be reviewed after six months to evaluate outcomes and future demand.	<b>Delivered –</b> January 2016
15. Additional resource to be allocated to the FAW unit in HR.  To more effectively manage transactional aspects of discrimination complaints including booking appointments for advisors, recording and monitoring implementation of recommendations.	<b>Delivered</b>  Ongoing
<b>Training</b>	
16. HR to develop and deliver new training provision for Fairness at Work Advisors, FAWA Appeals Advisors and HR Case Managers.	<b>Planned –</b> November 2016
17. HR to deliver twice yearly best practice updates and action learning sets for all FAWA and FAWAA.	<b>Planned –</b> April 2017
18. HR to create specification for new modules for first and second line managers (officers and police staff) on handling workplace disputes and managing complaints of discrimination.	<b>Planned –</b> November 2016
19. HR to design a series of senior leadership briefings (Chief Inspectors/police staff equivalent and above) to build capability and understanding of dealing with discrimination complaints.	<b>Planned –</b> Oct/Nov 2016
20. HR to arrange training for SMIU in dealing with complaints of discrimination or victimisation.	<b>Planned –</b>  Awaiting appointments

21. HR to arrange training for Professional Standards Champions and those responsible for informal resolution in dealing with complaints of discrimination or victimisation.	<b>Planned v</b> December 2016
22. HR to arrange training for Trade Unions and Police Staff Associations (including BPA and SAMURAI) in new FAW policies including dealing with discrimination and victimisation.	<b>Planned –</b> December 2016
<b>Management of FAW and Informal Resolution</b>	
23. DPS and HR to extend the role of Professional Standards Champions to include management of FAW complaints including those relating to discrimination. Role holders to receive appropriate training for these new responsibilities.	<b>Planned –</b> November 2016
24. Professional Standards Champions to create and maintain a network of individuals at B(OCU) level that are trained in informal resolution. HR to provide suitable training provision.	<b>Ongoing</b>
25. Options for mediations have been completed and costed. Roles/responsibilities will be assigned to each OCU. Designated person in each OCU to resolve complaints locally.	<b>Planned –</b> September 2016
<b>Support Mechanisms</b>	
26. HR to review the support mechanisms available to officers and police staff who raise complaints of discrimination or victimisation.	<b>Delivered –</b> April 2016
27. HR and DPS to consider more effective ways of managing officers and staff after their FAW or complaint of wrongdoing has been concluded to ensure that an effective working relationship is maintained going forward.	<b>Delivered –</b> April 2016

## Annex 2: Overview of the Morris, Taylor and Chapman reports

### **The Report of the Morris Inquiry, An independent inquiry into professional standards and employment matters in the Metropolitan Police Service, 2004**

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The Morris report examined how the MPS handled complaints: Fairness at Work (FAW) complaints, allegations against individuals and conflict in the workplace. It found that the FAW process was fundamentally flawed: FAW complaints took too long; staff lacked the necessary confidence needed to resolve issues; FAW Advisors did not always behave with impartiality; and that there was too much emphasis on restricting access to FAW complaints, including matters that were potentially of a disciplinary nature. It also found poor leadership; managers not taking responsibility for managing or resolving disputes; managers lacking confidence in managing difference; no common understanding of diversity and poor internal communication; and a need to explore early resolution and to learn from MPS's handling of high profile cases. The recommendations included a new grievance process based on the Acas Code of Practice and a review of how the DPS operates and manages investigations.

### **The Taylor Review of police disciplinary arrangements, January 2005**

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The Taylor report focused on officer disciplinary arrangements for the whole Police Service. It proposed a shift from blame and sanction to learning and development. Its recommendations included: conduct matters to be separated into misconduct and gross misconduct; ensuring that capability and performance were not inappropriately managed as misconduct; that there were time limits that all groups adhered to; engaging all groups to drive cultural change and acceptance of responsibility at all management levels; and a single code of ethics and conduct. The report led to

changes to regulations which introduced three key elements: new national standards of professional behaviour, reinvigoration of the Unsatisfactory Performance Procedures (UPP) and new misconduct procedures.

## **Chip Chapman, an Independent Review of the Police Disciplinary System in England and Wales, October 2014**

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The Chapman report set out proposals for a reformed, clear, public-focused, transparent and more independent police disciplinary system. It found similar issues to Morris and Taylor including: not dealing with difference effectively; that the ethos of Taylor was not being applied, i.e. managers going straight to conduct rather than tackling performance issues; a lack of internal and external trust; management interventions and leadership training needing improving; and a lack of timeliness and inconsistency in disciplinary outcomes nationally. It made 39 recommendations of which a number have been implemented that relate to the IPCC and officer misconduct hearings, for example, hearings in public.

## Annex 3: Terms of Reference

### Statutory Investigation into the Metropolitan Police Service by the Equality and Human Rights Commission

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#### Interpretation

1. For the purposes of these terms of reference the following phrases have the meanings set out below -
  - a. '*The 2006 Act*' means the Equality Act 2006;
  - b. '*The 2010 Act*' means the Equality Act 2010;
  - c. '*The Commission*' means the Equality and Human Rights Commission;
  - d. '*Previous equality enactments*' refers to the enactments listed at section 137(2) of the 2010 Act;
  - e. '*Police service staff*' includes all police officers, police staff and the special constabulary within the MPS;
  - f. '*MPS procedures*' are those practices and procedures operated by the MPS's Directorate of Professional Standards (DPS), under its Fairness at Work policy (FAW), and any other relevant processes by which complaints of unlawful discrimination are considered, investigated or addressed within the MPS;
  - g. '*Complaints of discrimination*' include all complaints, grievances, problems, or concerns involving potential discrimination, harassment or victimisation in the workplace because of a protected characteristic under the 2010 Act, or under the previous equality enactments, -
    - i. which were made in good faith by police service staff to the MPS between the beginning of January 2011 and the end of September 2014; and
    - ii. which were within the scope of the MPS procedures, or would have been had they been pursued further;
  - h. The phrase '*complaints of discrimination*' includes complaints as described above whether formally or informally made, and whether or not the complainant alleged or made specific reference to the terms 'discrimination' or 'harassment' or 'victimisation'.

- i. '*Unlawful act*' means any act or omission in the establishment, implementation or operation of MPS procedures in such a way so as to cause an unlawful detriment to a complainant by reason of

Either

- i. the protected characteristics of race, sex or sexual orientation, and
- ii. such act or omission being discrimination within one or more of sections 13 (direct discrimination), 19 (indirect discrimination), and/or 27 (victimisation) of the 2010 Act, and
- iii. such discrimination being prohibited by the 2010 Act,

Or

- iv. a contravention of the cognate provisions of the previous equality enactments replaced by the 2010 Act that began before and continued after the 1<sup>st</sup> October 2010;
- j. Reference to the '*ACAS Code of Practice*' is to the current version of the ACAS Code of Practice 1 on Disciplinary and Grievance procedures.

## Scope

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2. In order to make conclusions and recommendations pursuant to the provisions of the 2006 Act as to the respective past, current and future establishment, implementation or operation of MPS procedures, the investigation will consider whether there were unlawful acts in the treatment of complaints by Police service staff of sex and/or race and or sexual orientation discrimination under MPS procedures between the beginning of January 2011 and the end of September 2014.
3. For these purposes the investigation will examine -
  - a. How complaints of discrimination in the workplace have been dealt with in comparison with other types of complaints, including factors such as: timeliness, fairness, transparency, reaching a resolution and (where appropriate) redress for the complainant;
  - b. The cause or causes for any differential treatment found under (a);
  - c. Any extent to which the perception of organisational risk, cost or potential detriment to the reputations and/or prospects of implicated individuals (as opposed to the need to provide protection and redress for Police service

- staff and the need for the elimination of discrimination) has adversely impacted on the independent operation of the MPS procedures;
- d. Whether references to, or potential findings of discrimination may have been changed, or deleted, in reports relating to discrimination complaints and, if so, whether this was due to the impact (on those responsible for drafting and quality assuring reports or deciding next steps) of written policies, cultural factors, guidance, instructions or practice;
  - e. Whether all personnel involved in the MPS procedures (including complainants, managers, advisers and quality assurance reviewers operating the procedures) have had access to sufficient and appropriate guidance and support to instigate, pursue, assess or manage complaints of discrimination;
  - f. Whether cases of potential misconduct arising from discrimination are appropriately referred for action by the DPS or other action by management;
  - g. Whether the steps taken by the MPS subsequent to cases investigated have reduced or eliminated the risk of unlawful acts and omissions occurring;
  - h. The impact if any of the ACAS Code of Practice on the above matters.

## Sources of information

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- 4. The Commission will use all its powers under the 2006 Act to obtain the necessary information to conduct its investigation and it will consider any other information that it receives from the public or past or present Police service staff.
- 5. The evidence that the Commission will consider will include:
  - a. Documentation and information in whatever format it is stored (including digital) in relation to complaints or potential complaints of discrimination, including reports and supporting materials including (in all cases) final, archived, deleted and draft versions that is within the MPS's possession, control or power of recovery;
  - b. The views and experiences of Police service staff who have since January 2011 made discrimination complaints under the MPS procedures (or who have considered and then not pursued such a complaint) and the views and experiences of their representatives and of any witnesses;
  - c. The views and experiences of managers, advisers and quality assurance reviewers operating the MPS procedures;

- d. The outcomes of cases of alleged misconduct arising from discrimination complaints and of any disciplinary action taken by the MPS since January 2011;
- e. The outcomes of discrimination complaints heard under any MPS procedures, including the current employment situation of the complainant in each case;
- f. All information and documentation relating to its workforce and the MPS procedures produced by the MPS in complying with its obligations under the public sector equality duty set out in section 149 of the 2010 Act and under the Equality Act 2010 (Specific Duties) Regulations 2011;
- g. Any other evidence relevant to the investigation.

## Annex 4: Evidence provided by MPS: Briefings, reports and surveys, policies, guidance, data and forms

- Acas, Fairness At Work: Acas Survey of Metropolitan Police Staff 2015, June 2015
- Acas, Review of Fairness at Work: Report by Roy Lewis, Independent Reviewer, in conjunction with the Advisory, Conciliation and Arbitration Service, 29 October 2015
- Acas and Professor Roy Lewis, Review Of FAW: Agreed Plan For Monitoring Implementation and Impact, January 2016
- MPS, Closing Statement, 17 June 2016
- MPS, Diversity Health Check, Executive Summary, 11 November 2014
- MPS, Diversity Health Check Update Briefing Note, 12 January 2015
- MPS, EHRC Briefing Note, January 2015
- MPS, EHRC Briefing Note, June 2015
- MPS, EHRC Briefing, presentation to EHRC, 5 February 2015
- MPS, EHRC training Workshop Briefing, presentation 15 November 2015
- MPS, Fairness at Work Advisor – Skills Assessment Questionnaire (blank), 2009
- MPS, FAW training slides – 6 sessions 2009–2015
- MPS, Opening Statement for EHRC Oral Evidence, 11 November 2015
- MPS, Preventing disproportionality in the police officer misconduct process, Met Police Race Independent Advisory Group presentation, 9 May 2016
- MPS, Slides from case study presentation pack for MPS regulatory framework roundtable, 6 June 2016
- MPS, Written Evidence following 21 April 2016 Roundtable discussion on Regulatory Framework, 5 May 2016

- ORC International, 'Build a Better Met' engagement survey Overall infographics, 2015
- Savran, Metropolitan Police Cultural Audit Report, undated
- Savran, Metropolitan Police Cultural Audit Report, Executive Summary, November 2014

## **Policies, SOPs, toolkits and guidance**

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- Home Office Guidance, Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures, November 2012
- MPS, Attendance Management Policy, January 2014
- MPS, Attendance Management Policy Toolkit – Standard Operating Procedures, 19 November 2014
- MPS, Attendance Management Policy Toolkit – Standard Operating Procedures, 23 February 2015
- MPS, Bail Frontline Checklist, 11 July 2013
- MPS, Bail Management Policy, July 2013
- MPS, Bail Management Q&As, 11, July 2013
- MPS, Bail Management – Secondary Investigator Checklist, 11 July 2013
- MPS, Child Abuse Investigation – Standard Operating Procedures, 6 June 2012
- MPS, DMC and DPS media guidance, 9 November 2014
- MPS, Domestic Abuse policy, September 2014
- MPS, Equality Policy, 10 November 2010
- MPS, Equality Policy Toolkit, undated
- MPS, Equality Standard Operating Procedures, 10 November 2010
- MPS, FAW Advisor meeting with Originator/Subject/s/Witnesses checklist, undated
- MPS, Fairness At Work Standard Operating Procedure, 10 November 2010
- MPS, Fairness At Work Toolkit, undated
- MPS, How to update personal details MPS HR guidance (from People Pages)
- MPS, Internal Risk Management of Officers and Police Staff the subject of allegations of Domestic Violence and other crimes against Vulnerable Persons – Standard Operating Procedures, 30 May 2007

- MPS, LPM Flexible Working Guidance Paper, 24 April 2013
- MPS, Managing Disability and Reasonable Adjustments at Work – Standard Operating Procedures, 10 November 2010
- MPS, Media naming guidance flowchart, undated
- MPS, Media Policy, October 2013
- MPS, Media Policy, 11 November 2014
- MPS, Organisational Change (Police Staff) – Standard Operating Procedures, 22 September 2010
- MPS, Organisational Change Policy, 22 September 2010
- MPS, People Development Policy, 22 January 2010
- MPS, Police Bail Flowchart, 11 July 2013
- MPS, Police Officer Acting and Temporary Promotion – Standard Operating Procedures, 27 January 2010
- MPS, Police Officer Promotion – Standard Operating Procedures, 27 January 2010
- MPS, Police Officers/Staff as Victims of Domestic Abuse, Rape or other serious sexual offences – checklists, 25 August 2015
- MPS, Police Officers and Police Staff as Victims or Suspects of DA, Rape or Serious Sexual Assault Toolkit – Questions and Answers, 25 August 2015
- MPS, Police Postings – Standard Operating Procedures, 10 November 2010
- MPS, Police Staff Discipline – Managers Guidance – Standard Operating Procedures, 5 October 2011
- MPS, Police Staff Discipline – Standard Operating Procedures, 5 October 2011
- MPS, Police Staff Discipline – Standard Operating Procedures, 28 July 2015
- MPS, Police Staff Postings – Standard Operating Procedures, 4 May 2011
- MPS, Press Bureau ET instructions, undated
- MPS, Safeguarding Children – Standard Operating Procedures, 10 September 2008
- MPS, Staff and Line Manager’s process for making and dealing with an application for flexible working, July 2014
- MPS, Transgender – Standard Operating Procedures, 10 November 2010
- MPS, Work/Life Balance Policy, 23 July 2008

- MPS, Workforce Planning Policy, 10 November 2010

## Data and statistics

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- MPS, Leavers and Exit Survey data, July 2012–October 2015
- MPS, LPM (Tranche 1) Flexible Working Applications, 15 May to 25 November 2013 (Officers Only)
- MPS, Workforce data report, 17 June 2016 (with MPS Closing Statement)
- MPS, Workforce Planning Spreadsheet, End November 2014

## Forms

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- MPS, Form 456, Attendance Management Selection Criteria
- MPS, Form 6682, Form 1 Fairness at Work Policy: Notification of Concern, 2012
- MPS, Form 6683, Form 2 Fairness at Work Policy: Notification of Concern (Appeal), 2012
- MPS, Form 6687, Notes for Guidance on the Completion of the Fairness at Work Adviser's Report, 2012
- MPS, Form 6687, Notes for Guidance on the Completion of the Fairness at Work Adviser's Report, 2014
- MPS, Form 6688, Notes for Guidance on the Completion of the Fairness at Work Adviser's Report, 2014
- MPS, LPM Borough shift consultation Return form, 2013
- MPS, Form MM1, Misconduct Process, 2013

## Other documents

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- HMSO, Police England and Wales, The Police (Conduct) Regulations 2012
- Metropolitan Police Federation, Organisation Design, 2014
- Metropolitan Police Federation, Protocol 2013: Shift Arrangements For Compliant and Non-Compliant patterns, January 2013
- MPS, Metropolitan Police Federation and Superintendents Association – Review of Facilities: Deputy Commissioner report to People and Training Board, 27 May 2015

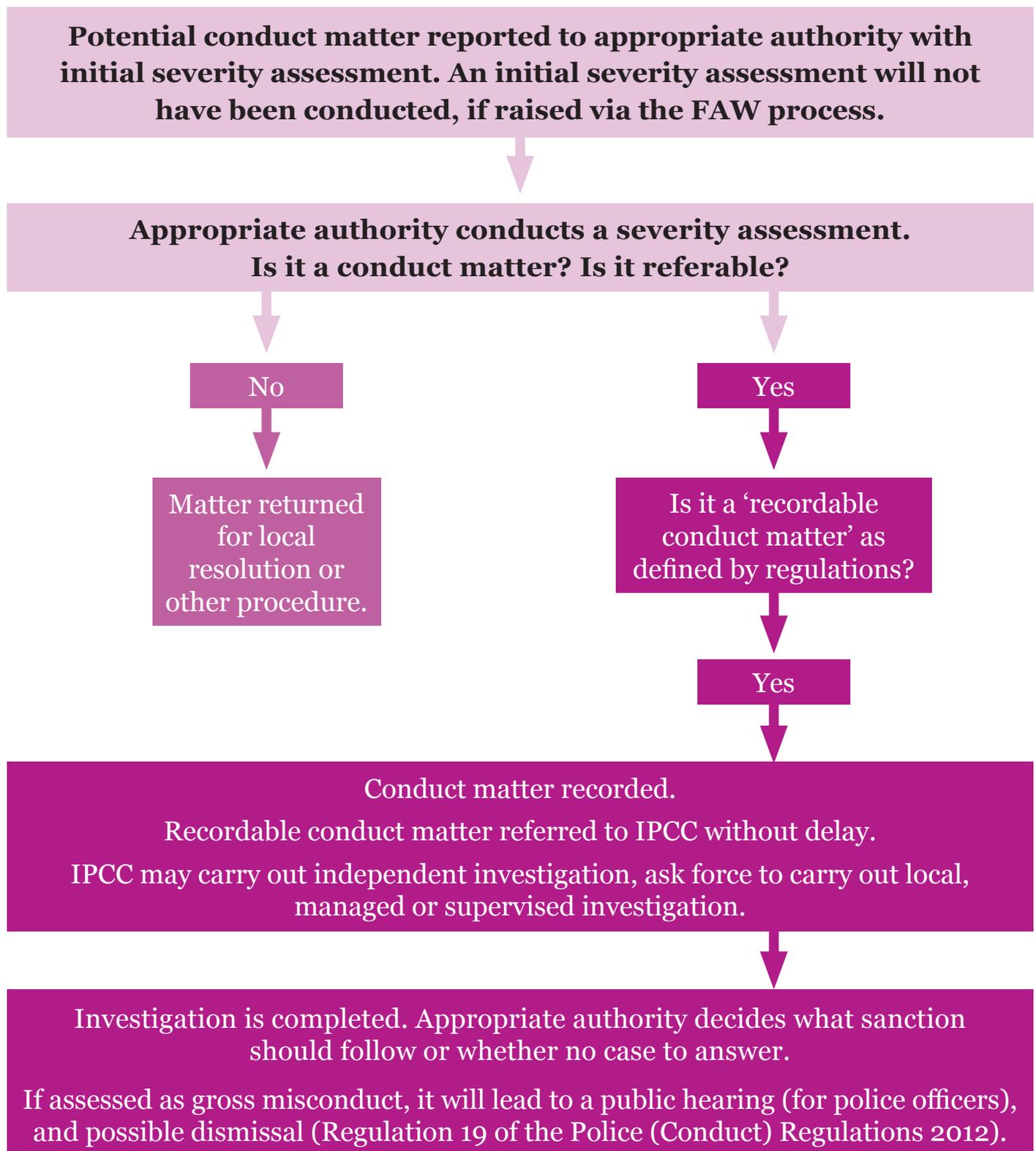
- MPS, Diamond Group (Howard) Organisational Learning Terms of Reference, undated
- MPS, Employment Law Newsletter (Legal Digest), July 2014, September 2014, December 2015
- MPS, Local Policing Model Detailed Shift Design Briefing Note, 4 March 2013
- MPS, Local Policing Model – Shift Rota Standardisation Briefing Note, July 2013
- MPS, New Partnership Framework between Metropolitan Police Service and the Trade Unions, 2014
- MPS, Review of Staff Support Associations and S.A.M.U.R.A.I – discussion paper/tasking proposal regarding Strategic HR review, undated
- MPS, SAMURAI Review, Consultants brief, undated
- MPS, 'The Brief', 16 January 2015

## Annex 5: Overall system

### Definitions:

A 'conduct matter' is defined in The Police Reform Act 2002 s12(2) and refers to a criminal offence or conduct that would justify bringing disciplinary proceedings.

A 'recordable conduct matter' is defined under regulation 7 of Police (Complaints and Misconduct) Regulations 2012 and includes behaviour liable to lead to misconduct proceedings which is aggravated by discrimination.



## Annex 6: A summary of the key MPS Standard Operating Procedures

### **Equality SOP**

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This supports the MPS's aim to recruit and retain a workforce that is more reflective of the people it serves. It covers all officers and police staff and sets out the rights and responsibilities everyone has under the Equality Act 2010, including eliminating discrimination from the working environment. Annexes include: guidance for individuals and managers to recognise, challenge and eliminate all forms of workplace bullying, harassment and victimisation; myths; impacts of bullying and harassment; line management and personal responsibility guidance and toolkit.

### **Fairness at Work SOP**

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This supports the Equality Policy and allows officers and staff who are dissatisfied about the way they have been treated at work to raise the matter without fear of retribution and to explore ways to find an acceptable resolution. It includes guidance on: initiating a FAW review; investigation and appeal procedures; FAWA appointment and role; monitoring and review; timescales; disciplinary issues; confidentiality; avoidance of victimisation; counter allegations; Employment Tribunal; modified procedures; and concerns about trade union representatives.

### **Police Staff Discipline – Managers Guidance – SOP**

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This supports the Performance Management of People Policy and gives guidance to managers to deal with unacceptable conduct, performance and/or attendance. It covers all officers and staff who manage staff. It includes guidance, sample letters, checklists and explanatory notes on: Unsatisfactory Performance and Attendance Procedures; misconduct and gross misconduct procedures; modified procedure for

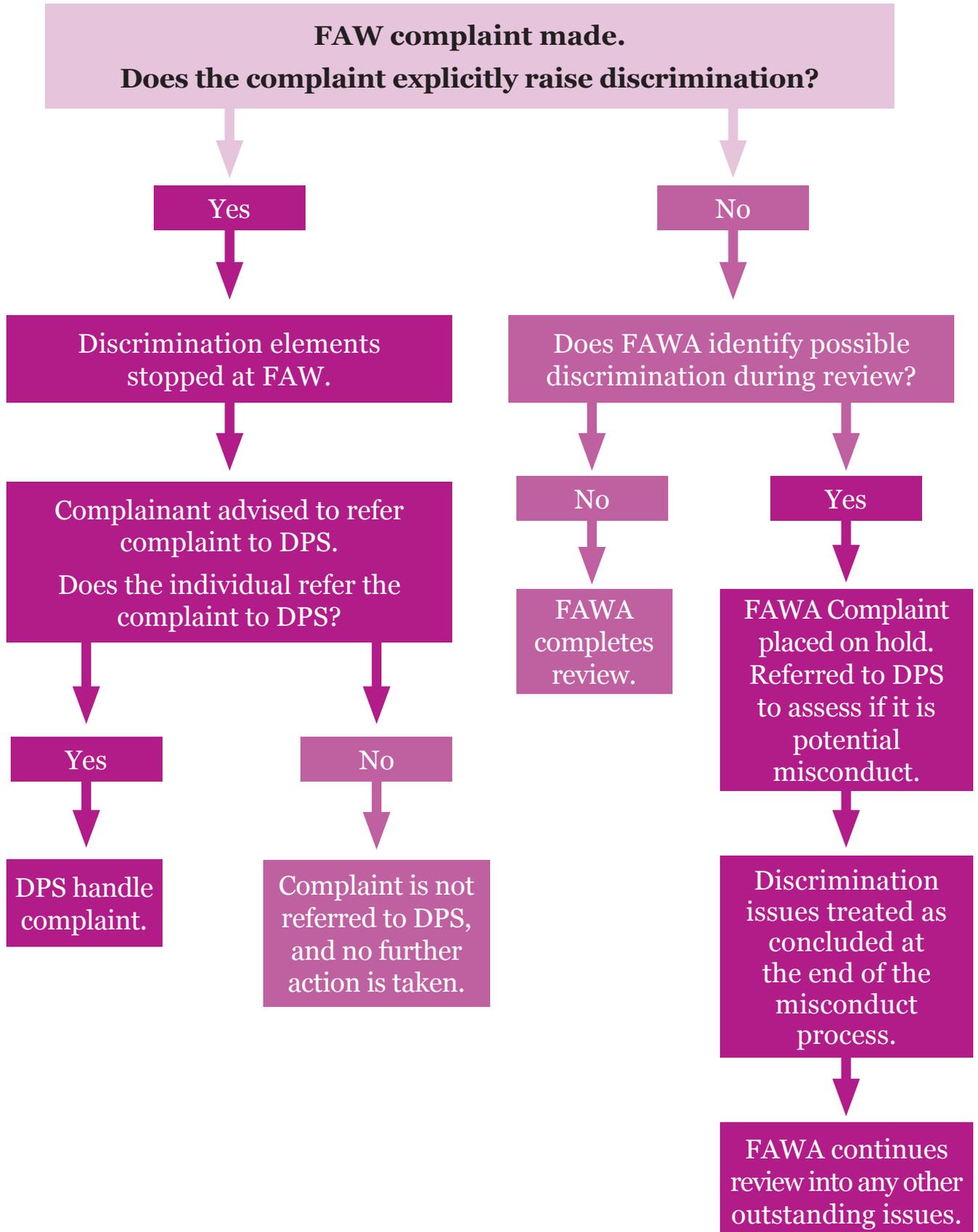
summary dismissal; disciplinary appeals procedure; evidence gathering; preparation for and conduct of a disciplinary interview.

## **Police Staff Discipline SOP**

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This supports the Performance Management of People Policy and gives guidance to staff on how unacceptable conduct, performance and attendance are dealt with. It includes guidance on: manager and staff responsibilities; disciplinary offences; representatives; unsatisfactory performance and attendance; misconduct and gross misconduct procedures; criminal offences; instigating formal disciplinary procedures; dismissal; appeals against formal disciplinary sanctions; representation; recording formal disciplinary action; and suspension.

# Annex 7: An individual makes a Fairness at Work complaint. What happens when it contains discrimination?



## Annex 8: Methodology to analyse the cases provided by MPS

Under the terms of reference a comparison was required between cases involving discrimination on the grounds of race, gender or sexual orientation (in-scope) and non-discrimination cases (out of scope). For reasons of proportionality, resources and timeliness we requested two samples of FAW complaints from within the timeframe of our terms of reference.

Sample 1 – all FAW complaints which raised race, gender or sexual orientation discrimination as the primary or main complaint between October 2013 and September 2014; and

Sample 2 – all FAW complaints made in May and June 2013, whether or not they raised issues of potential discrimination.

For sample 1 the MPS provided the documentation for 61 complaints where race, sex or sexual orientation discrimination was raised as the primary complaint. In addition they provided the documentation for all complaints in that time period which may have been discrimination, but which were not explicitly labelled as such. These were complaints classified as relating to a protected characteristic, the behaviour of a line manager or member of staff, and complaints raised by female and/or ethnic minority officers or staff. 158 cases were provided in total, of which the EHRC considered at least 80 were in-scope.

We received the documentation for 65 complaints in sample 2.

## Annex 9: An overview of statistical findings: misconduct allegations and Fairness at Work (FAW) complaints, by ethnicity and gender

This analysis was carried out on behalf of the Commission by independent statisticians from Independent Social Research (ISR). The administrative data that was provided by MPS for the analysis covered a three-year period from April 2011 to March 2014.

One reason for undertaking this statistical analysis was to address the perception or expectation of victimisation that had been expressed to the Commission by a number of people that we had interviewed as part of the investigation. These individuals were of the opinion that anyone who raised a FAW complaint that alleged discrimination was then, as a direct result of this, more likely to face internal disciplinary procedures for conduct matters.

### Key measures analysed for misconduct allegations in the context of FAWs

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- The percentage of officers and staff against whom any misconduct allegation was recorded, by FAW complaints and FAWs by ethnicity and gender<sup>39</sup>
- The percentage of officers and staff with any recorded allegation against whom gross misconduct allegation was recorded, by FAW complaints and FAWs by ethnicity and gender

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<sup>39</sup> Due to the small number of sexual orientation complaints or complaints where sexual orientation was recorded on the MPS HR database, we were unable to include sexual orientation in the analysis.

- The percentage of officers and staff with any recorded allegation against whom an allegation was substantiated, by FAW complaints and FAWs by ethnicity and gender
- The percentage of officers and staff with any recorded allegation against whom formal action was taken, by FAW complaints and FAWs by ethnicity and gender
- The percentage of officers and staff receiving any formal action who received a severe sanction, by FAW complaints and FAWs by ethnicity and gender

## Methods

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The analysis relates to the three years of the Commission's investigation and uses MPS data from April 2011 to March 2014 for people employed by the MPS for all or part of that time; a total of 69,062 officers and staff. Separate analyses were undertaken for officers and for other staff. Officers include Regular Officers at all levels (Police Constable to Commissioner), Special Constables and Community Support Officers. Other staff comprise all other types of staff employed by the MPS.

The analysis measured staff years instead of staff in order to get a more accurate figure. Over a three year period, some staff (and officers) would have left or joined the force. By analysing each staff year separately, a more accurate analysis could be done that takes account of these fluctuations. Anyone who was employed by the MPS for only part of a year is treated, for the purposes of this analysis, as if they were employed for the whole year. This means that any individual officer or staff member is counted in the data up to three times and, for the descriptive analysis, the terms 'employee years' or 'officer years' and 'staff years' are used to refer to whole or part years of employment.

Regression analysis was used by ISR for reporting inferential analysis controlled for the number of years an officer or staff member was present in the data.<sup>40</sup> ISR reported on only statistically significant differences from the inferential analysis. All references to significant differences refer to statistical differences.

To the extent permitted by the data available, the inferential analysis also controls for factors other than ethnicity and gender which could account for observed differences in misconduct allegations and FAW complaints. These include other employee characteristics (such as their age, length of service, rank and business group) and, wherever possible, the nature and other characteristics of allegations or complaints.

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<sup>40</sup> The type of regression used is logistic regression using a general estimating equation (GEE) methodology.

By doing the analysis in this way IRS have ruled out the possibility that statistical differences by ethnicity or gender are due to any of the factors that they have controlled for, although they may still relate to other factors which could not be controlled.

When considering whether or not a recorded misconduct allegation was preceded by a FAW complaint, there was a statistically significant result showing that an individual would be 4.2 times more likely to be subject to a misconduct allegation, if they had raised a FAW in that year or the previous one.

However, there are limitations to what conclusions can be drawn from this statistic. This is because it was possible only to consider FAW complaints raised within the years covered by the data; because the structure of the data prevented ISR from treating FAW complaints falling within the same year as a recorded misconduct allegation separately from those falling in previous years covered by the data; and it is possible that some FAW complaints made in the same year as a misconduct allegation were raised after the allegation.

All of these limitations are compounded by the probability, brought to ISR's attention by the MPS, of delays between an incident occurring and formal action being initiated. ISR then did further analysis looking at those who made a FAW complaint, to see if they were subsequently more likely to receive a misconduct allegation.

Therefore the findings of the analysis should be interpreted with these caveats in mind.

## **The interaction of FAWs with recorded misconduct allegations and their outcomes**

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Differences were identified in the recording of misconduct allegations against an officer or staff member who had raised a FAW complaint, compared with those who had not raised a FAW complaint. After controlling for other potential influences available in the data, officers and staff who raised FAW complaints were more likely to have misconduct allegations recorded against them in the same or a prior year.

ISR found no statistical evidence that, overall, officers or staff were more likely to have worse outcomes within the misconduct process, once an allegation was recorded, as a result of raising a FAW complaint. This applies to the recording of gross misconduct, and to any subsequent substantiation of allegations and formal action and, among these, severe sanctions.

## Summary

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Statistical evidence was found of differences by ethnicity and gender during the period covered by the data. These differences relate primarily to the initiation of disciplinary proceedings against officers and staff through the recording of misconduct allegations and to the raising of FAW complaints by officers and staff, rather than to the way in which such incidents were investigated and resolved.

Officers and staff who raised FAW complaints were more likely to be subject to misconduct allegations in the same or a subsequent year covered by the data. Raising a FAW complaint in the same or a prior year also disproportionately affected female officers compared with male officers in their propensity to be subject to misconduct allegations, but there were no differences by ethnicity.

It is important to note that the analysis was constrained by a number of limitations associated with the data, the data structure and by the considered procedures themselves. These limitations included the period covered by the data, as the summary data provided by MPS only recorded the year and not the exact date of when a FAW complaint has been raised therefore this did not allow ISR to say with certainty which came first; the FAW complaint or the misconduct allegation. A further limitation was the comparatively rare recording of misconduct allegations and raising of FAWs which results in small numbers for the analysis to be based on.

The analysis is also limited to the allegations or complaints which were raised formally through these procedures and, when examining misconduct allegations in the context of FAWs, difficulty in determining the order of these. The mechanisms underlying any statistical differences also remain unexplained by this analysis, and factors not represented in the available data may account for them. Because of this ISR were unable to prove or disprove a link between the two processes.

## Glossary

**Direct discrimination:** Is treating someone less favourably than others because of their protected characteristic, for example, refusing to promote an officer because of their race, gender or sexual orientation. Treating a person less favourably because they associate with someone with a protected characteristic or because of a perceived characteristic is also direct discrimination. (s13 Equality Act 2010).

**Harassment:** Is when one person engages in unwanted conduct (including sexual conduct), related to another person's protected characteristic, which has the purpose or effect, of violating the other person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. This includes any less favourable treatment because the person has rejected or not submitted to conduct of a sexual nature. (s26 Equality Act 2010).

**Indirect discrimination:** Is where a neutral policy or rule is applied to everyone but puts those with a particular protected characteristic at a disadvantage compared to others who do not have that protected characteristic. Indirect discrimination can be justified if the aim of the policy or rule is legitimate, and the means used to implement the policy are proportionate and necessary.

**Protected characteristics:** Discrimination which happens because of one or more of the following characteristics is unlawful under the Equality Act: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. Marriage and civil partnership is a protected characteristic, but only in relation to employment (s4-12 Equality Act 2010).

**Unlawful acts as covered by this investigation:** Acts or omissions prohibited by the Equality Act 2010 provisions on direct discrimination, indirect discrimination or victimisation in the way MPS operate their procedures which cause a detriment to complainants because of their race, sex or sexual orientation. (See Terms of Reference - Annex 3).

**Victimisation:** Is when person A, subjects another person B, to a detriment, because B has done a protected act, or A thinks B has done or may do a protected act. Protected acts include bringing legal proceedings under the Equality Act, making

a complaint, being a witness and alleging someone has done something unlawful under the Act (s27 Equality Act 2010).

**Acas (Advisory, Conciliation and Arbitration Service):** Provides free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law. Acas were commissioned by the MPS to conduct an independent review of the MPS FAW procedure following the recommendations of the Carol Howard Employment Tribunal.

**Acas Fairness at Work Staff Survey:** An online survey of the MPS's entire workforce awareness and experience of the FAW process. The survey was carried out in March/April 2015.

**Appropriate authority:** The person or 'body' of people in a police force who have the responsibility to decide whether the behaviour complained about could lead to misconduct proceedings. In the MPS, the appropriate authority is the Directorate of Professionals Standards (DPS).

**BOCU – Borough Operational Command Unit:** The Metropolitan Police use this term to describe their regional units (which are based on the 32 London boroughs).

**Borough Commander:** Is the head of a policing area and responsible for all policing activity in their area. This may be a geographical area or a specialist unit.

**Complaint:** For the purpose of the investigation a complaint is any internal complaint made by an MPS officer or staff. This includes a grievance/Fairness at Work, report of wrongdoing or misconduct. It does not include complaints made by members of the public.

**Conduct matters:** Circumstances where police officers or police staff have behaved in a manner that would justify bringing disciplinary proceedings against them (Police Reform Act 2002).

**CPS – Crown Prosecution Services:** Is responsible for prosecuting criminal cases investigated by the police in England and Wales.

**Disciplinary procedures:** There are different procedures for police officers and police staff. For officers misconduct is dealt with under the Conduct Regulations. For staff misconduct is dealt with under standard employment law. Unlawful discrimination is potentially a disciplinary offence and officers and staff may be subject to misconduct proceedings.

**DLS – Directorate of Legal Services:** The MPS's legal department, which provides legal advice and representation to the Commissioner.

**DPS – Directorate of Professional Standards:** Responsible for professional standards across the MPS. It is made up of a number of central teams including the Practice Support Team and SMIU.

**FAW – Fairness at Work:** The MPS's grievance procedure for both police officers and police staff. It allows personnel who are dissatisfied about the way they have been treated at work to raise the matter without fear of retribution and to explore ways to find an acceptable solution. It cannot apportion blame.

**FAWA – Fairness at Work Advisor:** Personnel who investigate and aim to resolve the concerns raised by an individual (the originator) making a complaint through the FAW process. They produce a report setting out their findings and recommendations. Most FAWAs are volunteers who undertake the role on a part-time basis in addition to their normal duties. They are assigned cases by the FAW Co-ordinator.

**FAWAA – Fairness at Work Appeal Advisor:** Personnel who investigate and aim to resolve the concerns raised by the originator in a FAW appeal.

**Fairness at Work Coordinator:** Allocates cases to FAWAs, quality assures FAWA reports, monitors the FAW process and oversees the implementation of recommendations. The role was carried out by the Practice Support Team Head of the FAW Team up to May 2014, but we refer to FAW Co-ordinator throughout the report.

**Gold Group:** A special team set up to support the management of an effective response to the identified matter.

**Grievance:** All employers must have a grievance procedure. FAW is the MPS's grievance procedure. It applies to all officers and staff.

**Gross misconduct:** For the MPS is behaviour or conduct which breaches Professional Standards of Behaviour and the Police Staff Discipline SOP for staff and may be considered serious enough to result in dismissal. Unlawful discrimination in relation to both colleagues and/or the public is deemed potential gross misconduct.

**Harassment:** Is when one person engages in unwanted conduct (including sexual conduct), related to another person's protected characteristic, which has the purpose or effect, of violating the other person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. This includes any less favourable treatment because the person has rejected or not submitted to conduct of a sexual nature (s26 Equality Act 2010).

**High Touch or Independent External Advisors:** Introduced following the Howard case. External FAWAs, who are not MPS employees. They have a specialist background in HR or previous experience of senior management within the MPS.

**HMIC – Her Majesty’s Inspectorate of Constabulary:** Independently inspects and monitors police forces in England and Wales.

**Informal resolution:** The initial stage of the FAW procedure. Line managers and originators attempt to resolve concerns through day-to-day management or mediation.

**IPCC – Independent Police Complaints Commission:** The independent body that oversees the police complaints system in England and Wales.

**Misconduct:** In the MPS behaviour or conduct which breaches Professional Standards of Behaviour for officers and the Police Staff Discipline SOP for staff which, although unacceptable, would not justify dismissal.

**MOPAC – Mayor’s Office for Policing and Crime:** Sets the MPS’s priorities and budget. It replaced the Metropolitan Police Authority in 2012.

**MPS – Metropolitan Police Service.**

**MPS Fairness at Work and Discrimination Complaints (FAWDC) action plan:** This was prepared by the MPS in response to the recommendations in the Acas report.

**OCU – Occupational Command Unit:** Specialist units within the MPS, such as the Territorial Support Group and Specialist Firearms Command.

**PSC – Professional Standards Champion:** Are based on BOCUs and carry their role out in addition to their day-to-day responsibilities. They undertake the initial severity assessment for officer disciplinary cases, prior to referral to central DPS, and manage misconduct cases and hearings locally.

**PCSO – Police Community Support Officer:** Police staff who work on the frontline alongside police officers. They do not have the same powers, for example of arrest.

**PFEW Police Federation of England and Wales:** The statutory staff association for police Constables, Sergeants, Inspectors and Chief Inspectors in the 43 territorial police forces in England and Wales.

**Police Code of Ethics:** Code of Practice setting out the principles and standards of professional behaviour for the police in England and Wales.

**Police officers:** Officers of the crown that are not categorised as employees. They benefit from the protection of discrimination laws (Equality Act 2010), but are excluded from a number of statutory protections, including unfair dismissal rights. They include Special Constables.

**Police staff:** Civilians who carry out functions to assist officers and support the smooth running of their police force. They include Police Community Support Officers (PCSOs).

**PST – Practice Support Team:** Dealt with staff misconduct and FAW complaints and was part of the MPS's Human Resource (HR) department up to 2013, when it moved to the DPS. From January 2011 PST included a central FAW team and FAW Co-ordinator, but this moved to HR Shared Services in late 2013.

**PSU – Professional Standards Unit:** A small team based on a BOCU and responsible for professional standards and dealing with misconduct issues locally.

**Right-line:** A confidential telephone line and online system operated by the MPS for officers and staff to report wrongdoing.

**Sanctions:** For the purpose of this report a sanction is any action, either formal or informal that is taken following an internal complaint. This includes management action or management advice, written warnings and dismissal.

**Severity Assessment:** An assessment of whether the conduct of a police officer merits misconduct, gross misconduct or management action, is performance-related, or merits no further action. A severity assessment is not part of the misconduct process for staff.

**SMIU – Serious Misconduct Investigation Unit:** Receives public complaints and investigates complex and serious allegations of misconduct and gross misconduct.

**SOP – Standard Operating Procedure:** Set out the actions to be taken to deliver MPS policy. They include the processes, actions, roles, responsibilities and forms required to be compliant with the policy.

**Staff Associations:** Representative organisations that work to ensure that the voices of their members are heard. They also support and advise individual members.

**Unions:** PCS, Prospect, Unite the Union and the FDA is the recognised unions for MPS staff.

**Wrongdoing:** The disclosure of information which tends to show particular concerns such as breaching the Standards of Professional Behaviour for officers and the

Police Staff Discipline SOP. This includes bullying in the workplace, harassment or discriminatory behaviour and the deliberate concealment of such information.

## Contacts

This publication and related equality and human rights resources are available from the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com).

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

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