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AND TOLERANT SOCIETY

An Evaluation of the New Police Misconduct Procedures

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The views expressed in this report are those of the authors, not necessarily those of the Home Office (nor do they reflect Government policy).

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Summary

Reform of the police disciplinary process

Following concerns raised by the Home Affairs Committee (1992; 1998a), significant changes were made to the existing system for dealing with police misconduct. The reforms were embodied in the new misconduct procedures which were introduced in April 1999 (to replace the old discipline procedures). The procedural reforms were based around:

- a reduction in the standard of proof at disciplinary hearings from 'beyond reasonable doubt' to the 'balance of probabilities';
- the introduction of tribunal panels to preside over hearings;
- new fast-track procedures for cases with clear evidence of serious misconduct;
- a Code of Conduct setting out standards of behaviour expected from police officers;
- written warnings for dealing with less serious incidents of police misconduct; and
- separate procedures for dealing with poor performance outside the disciplinary process.

The primary aim of procedural changes was to improve the effectiveness of the disciplinary process. The procedures also aimed to improve police standards and secure confidence in the process without adversely affecting operational police practice and officer morale.

The research

The aim of the study is to evaluate the impact of the changes to the police disciplinary process, particularly in terms of the effectiveness of the new misconduct procedures, their use, and effect on operational police officers. The evaluation draws on a sample of eight police forces from across England and Wales. The data sources used in the evaluation consisted of:

- force monitoring statistics;
- disciplinary case files;
- 29 in-depth interviews with Complaints and Discipline department staff; and
- individual and group interviews with operational police officers (106 officers in total).

As such, the report is specifically intended for policy makers and those working in the sphere of police discipline in the police service and partner agencies.

Impact on the disciplinary process

Overall, there was no evidence to suggest that the reforms had prompted any significant changes:

- **Perceived effectiveness** – There was a widespread view that the new misconduct procedures had little impact in practical terms and that, despite being effective, were no more so than the old discipline procedures. Although implementation was reported to be relatively smooth, concerns were raised about the 'lead-in' time for the reforms and the level of training provided to officers.
- **Investigations** – The number of investigations did not increase significantly in the sample forces after the reforms; investigations decreased and increased in metropolitan and non-metropolitan forces respectively, in line with longer-term trends. The prevailing view amongst those interviewed was that cases had remained at a "broadly similar" level.
- **Charges** – Provisional analysis of case files indicated that, perhaps contrary to expectations, the average number of charges per officer in each case had declined slightly (1.7 charges under the new misconduct procedures compared to 2.1 charges under the old discipline procedures). About one-third of those interviewed reported no change in the number of charges brought.

- **Outcome of cases** – Provisional evidence suggested that hearings had not increased as might be expected. Indeed, the number carried out after the reforms was not as high as in previous years (but this may change in the longer-term). Early evidence also indicated that the outcome of cases had not changed significantly, although it is too early to say for certain because of the number of pending cases.

There was evidence that the reforms had prompted some positive changes, particularly in terms of the use of written warnings. The number of warnings issued increased substantially in the sample forces, increasing from 174 to 254 after their introduction. Warnings were seen by Complaints and Discipline department staff as one of the most significant reforms with about two-thirds viewing them in positive terms. Concerns were raised, however, that their use at a local level was patchy and inconsistent. Provisional analysis of the disciplinary case files also showed a reduction in the time taken for cases to be concluded. However, Complaints and Discipline department staff were negative about the impact of the new misconduct procedures on reducing delays in the system. There is also a question about whether the size of the broad statistical change would have an impact on individual cases at a more local level.

Impact on Complaints and Discipline departments

The research looked at the impact of the new misconduct procedures on the process of disciplining officers from the perspective of Complaints and Discipline department staff:

- **Investigation process** – A majority of those interviewed reported that the new misconduct procedures had not greatly changed the investigation process. The lower standard of proof was not seen to have had much impact; the same level and type of evidence would be gathered. However, a small number questioned whether it had been implemented fully.
- **The Code of Conduct** – Views amongst Complaints and Discipline department staff about the new Code of Conduct were mixed. It was clear from those interviewed that charging officers had become a more involved and detailed process following its introduction. A significant proportion felt that it was more difficult to charge officers; the principles set out in the code were described as being imprecise and open to interpretation. The Code of Conduct was, however, not always seen as a major change and its introduction was viewed positively by some.
- **Disciplinary hearing** – There was no prevailing view about how the ‘balance of probabilities’ had affected hearings; whereas a significant proportion reported that it was being used along a sliding scale, a small number reported that it had no impact. Tribunal panels were viewed positively by Complaints and Discipline department staff. Panels were generally seen to be effective and fair, and were able to draw on more ‘grounded’ experiences of policing. They were also seen to encourage leadership amongst panel members at a local level.

Impact on operational officers

To assess the wider impact of the reforms (particularly on police practice and officer morale), the research examined the perceptions and experiences of operational police officers:

- **Officer knowledge** – There was an overall awareness amongst operational officers that new procedures had been introduced, although knowledge of specific changes was limited to the change in the standard of proof. Training was generally seen to be limited.
- **Views on the disciplinary process** – The officers generally viewed the new misconduct procedures in negative terms. For example:
 - the procedures were seen as a mechanism for dismissing officers, rather than a tool for reducing misconduct;
 - officers were also insecure about, and distrustful of, the investigation process;
 - the use of the ‘balance of probabilities’ was seen to be unfair and that they were vulnerable as a result of the reforms; and

- the length of time and the perceived lack of communication during the disciplinary process were highlighted as key concerns and the cause of much resentment.
- **Defining police misconduct** – There was uncertainty amongst officers about how misconduct was defined under the new Code of Conduct; a significant proportion commented that the old Discipline Code was much clearer and more specific. Given the apparent gap between the Code of Conduct and the need for a clear framework, operational officers seemed to have developed their own working definitions of misconduct. Rather than being fixed and precise, these tended to consist of examples of behaviour considered by officers to be unacceptable.
- **Officer practice and morale** – There was no evidence from the interviews to suggest that the new police misconduct procedures had affected the perceived risks associated with policing (e.g. in terms of receiving a complaint). The reforms were not in the forefront of officers' minds and not reported to have adversely affected their decision-making or practices. Officers did report, however, being more cautious in their use of language and in public encounters. This was reported to have been prompted by broad, longer-term factors (e.g. changes in police culture, integrity tests, negative public and media attitudes) rather than the procedural reforms.

There was no evidence that morale had been affected by the new misconduct procedures. Again, officer morale was linked more to other factors (e.g. staffing and the views of the public and media). It should also be noted that the effect of these other factors was seen to be cumulative.

Discussion, conclusions and recommendations

Overall, the research shows that, during the first two years of implementation, the new misconduct procedures have had a relatively limited impact. However, although the report has focused on the impact of procedural reforms, it should be recognised that a range of different methods exist for addressing misconduct and promoting integrity. These include, for example, leadership, proactive investigation, training, and organisational learning. Progress in tackling misconduct might be made in using disciplinary procedures alongside more proactivity and targeted methods, in an holistic approach to the problem. The interventions put in place in Merseyside Police provide a promising example of an holistic approach to misconduct. Based primarily on the analysis of complaints data, an officer referral scheme and communication strategy, the approach has led to a significant reduction in the number of recorded complaints.

The research points to a range of targeted recommendations.

The Home Office (in partnership) should:

- review and clarify the guidance to improve the practicality of the procedures;
- attempt to resolve some of the practical problems with the Code of Conduct (e.g. using examples and 'operating guidelines' to help illustrate and support the existing principles);
- extend the current mechanisms for communication to encourage the sharing of best practice and consistency between forces;
- monitor the use and impact of the new misconduct procedures on an ongoing basis;
- identify good practice and ways of improving efficiency and effectiveness of the current procedural framework; and
- be sensitive to the needs of forces and partner agencies in future policy changes, and provide extensive implementation support to assist the delivery of reforms.

Police Complaints and Discipline departments should:

- use the procedures within a broader, holistic approach to misconduct based on proactivity and problem-solving – these should be monitored and evaluated;
- ensure that poor performance is not processed under the new misconduct procedures – such issues need to be addressed by the appropriate department;
- monitor decisions at the investigation and hearing stages, and the use of written warnings, to ensure consistency;

- develop, with training departments, communication strategies to educate officers about ethical standards in an operational context and how to minimise the risks of misconduct;
- encourage active supervision at a local level in order to identify, monitor and challenge problems of officer conduct;
- strengthen the existing mechanisms for reporting misconduct; and
- take forward ways of helping to secure confidence in the disciplinary process (e.g. reducing delays, demonstrating openness and fairness, improving communication with complainants and officers).

Contents

	Page
Acknowledgements	i
Summary	ii
1. Introduction	1
Reform of police disciplinary process	1
Terminology	1
The research	2
The report	3
2. The new police misconduct procedures	5
Police misconduct and its regulation	5
The new misconduct procedures	5
The aims of the procedural reforms	7
Summary and conclusions	7
3. Impact on the disciplinary process	9
Implementation of the new misconduct procedures	9
Perceived effectiveness of the new misconduct procedures	10
Impact on investigations and charges	10
Impact on disciplinary hearings	13
Written warnings	15
Reducing delays in the disciplinary process	16
Summary and conclusions	18
4. Impact on Complaints and Discipline departments	19
Formal investigations	19
Misconduct charges – applying the Code of Conduct	20
Disciplinary hearings	23
Summary and conclusions	26
5. Impact on operational officers	28
Knowledge and training	28
Views on the disciplinary process	29
Officers' concept of misconduct	31
The impact on police practice – managing risk	32
The impact on officer morale	33
Summary and conclusions	33
6. Towards an holistic approach: a brief discussion	35
7. Conclusions and recommendations	37
Conclusions	37
Recommendations	37
References	40
Appendix A: Discipline Code	41
Appendix B: Code of Conduct for Police Officers	44
Appendix C: Overview of the new misconduct procedures and the procedural changes	46

List of tables

Table No.	Caption	Page
1.	Interviews with officers involved in the disciplinary process	3
2.	Individual and group interviews with operational officers	4
3.	Summary of the procedural reforms	7
4.	The aims of the procedural reforms	8
5.	The coverage of misconduct charges – examples	23
6.	The procedural and holistic models	36

List of figures

Figure No.	Caption	Page
1.	Overview of the new misconduct procedures	6
2.	Investigations and hearings in metropolitan forces (1996/97 – 2000/01)	11
3.	Investigations and hearings in non-metropolitan forces (1996/97 – 2000/01)	11
4.	The outcome of officers' investigations in metropolitan forces (1996/97 – 2000/01)	14
5.	The outcome of officers' investigations in non-metropolitan forces (1996/97 – 2000/01)	14

List of boxes

Box No.	Caption	Page
1.	Views on the use of written warnings	15
2.	Perceived factors contributing to delays	17
3.	Adapting to the lower standard of proof – an example	20
4.	Problems with the principle of 'general conduct'	22
5.	Views on the fast-track procedures	23
6.	Views on other procedural changes	26
7.	An example of the perceived unfairness of investigations	29
8.	An example of the perceived impact of the standard of proof	30
9.	Complaints reduction in Merseyside Police	36

1. Introduction

Reform of the police disciplinary process

Over the last decade, the effectiveness of the police disciplinary process has been a central feature of debates on the accountability and integrity of the police service. These debates led, in 1999, to the introduction of reforms aimed at improving the existing system for dealing with police misconduct.

The Home Affairs Committee has played a central role in shaping the reform of the disciplinary process. In 1992, the Home Affairs Committee carried out a review of the police complaints system, which was followed by an extensive period of government consultation. In order to inform the outcome of that consultation, the Home Affairs Committee (1998a) carried out a second review, focused more directly on the disciplinary process. Concerns were raised during that review about the effectiveness of the existing procedures based on:

- the widely held perception that, in many cases, individual officers appeared to go unpunished “where it is clear there has been some wrongdoing”;
- statistical evidence that, in 1995/96 and 1996/97, only about 2% of recorded complaints were substantiated following a formal investigation;
- the view that the growth in the number, and cost, of successful civil actions against the police represented public disillusionment with the complaints system; and
- the opinions of some stakeholders that there was a lack of public confidence in the system and that the disciplinary framework did not adequately deal with officer misconduct.

The Home Affairs Committee, as a result, concluded that the “police complaints and disciplinary procedures are inadequate both to ensure effective management and to command public confidence”. It, therefore, recommended reforms to the existing arrangements. The recommendations were also endorsed in the *Report of the Inquiry into the Matters Arising from the Death of Stephen Lawrence* (1999) which highlighted the lack of confidence amongst minority ethnic communities in the police complaints system.

In response to the Home Affairs Committee, the Home Secretary (Home Affairs Committee, 1998b) announced changes to disciplinary process. These were implemented in April 1999¹ and introduced:

- a lower standard of proof at disciplinary hearings (i.e. the ‘balance of probabilities’);
- tribunal panels to preside over disciplinary hearings;
- fast-track procedures for cases of serious misconduct;
- a new Code of Conduct setting out principles of police officer activity;
- written warnings for less serious cases of misconduct; and
- a new framework to deal with poor performance issues.

Terminology

For clarity, a distinction is made in the report between the procedures which were in place before, and those introduced after, April 1999:

- The ‘old discipline procedures’ refer to the procedures in operation until April 1999 (see Police (Discipline) Regulations 1985).
- The ‘new misconduct procedures’ refer to the procedures implemented from April 1999 onwards (see Police (Conduct) Regulations 1999).

¹ Transitional arrangements were in place during the first 12 months of their operation.

- ‘Disciplinary process’ is used as a generic term to refer to the arrangements for disciplining police officers, rather than a specific set of procedures. Carter (1991) defined the disciplinary process as “the mechanism through which personnel who have violated [police] department procedures and rules are sanctioned”.

The research

Aims of the study

The Home Office Research, Development and Statistics Directorate (RDS) was commissioned to evaluate the impact of the changes to the police disciplinary process. Specifically, the study aims to:

- assess the effectiveness of the new police misconduct procedures;
- understand how the procedures have been used by forces in practical terms;
- explore the views of operational officers towards the new misconduct procedures; and
- examine whether, and in what ways, the reforms have affected police practice.

The research meets with recommendation 55 of the Stephen Lawrence Inquiry, that the new police misconduct procedures “should be fully implemented and closely and publicly monitored as to their effectiveness”. It also fulfils the Home Secretary’s (Home Affairs Committee, 1998b) commitment for research on the effect of the reforms on officer decision-making and morale.

As such, the report is specifically intended for policy makers and those working in the sphere of police discipline in the police service and partner agencies. It may also be of interest to other parts of the police service, academics, and those interested in police accountability.

Methodology

The evaluation was carried out in the Complaints and Discipline (C&D) departments² of eight police forces. The sample forces, drawn from across England and Wales, included:

- Cumbria Constabulary;
- Derbyshire Constabulary;
- Essex Police;
- Greater Manchester Police;
- Northamptonshire Police;
- the Metropolitan Police Service (MPS);
- South Yorkshire Police; and
- Surrey Police.

The sample, as a whole, is broadly representative of the police service. Individual sample forces were selected to represent different demographic and policing characteristics (based on Her Majesty’s Inspectorate of Constabulary’s model for inter-force comparison). Force monitoring statistics were also taken into account to ensure that forces with different ‘use’ levels of the old police discipline procedures were included.

Overall, the evaluation consisted of four main elements:

- **Force statistics** – Monitoring statistics routinely collected by the C&D departments in the eight forces were analysed to examine change over time. These included the number of investigations recorded each year, and the source and outcome of each investigation. Figures were analysed between 1996/97 and 2000/01 to allow the period before and after the procedural changes to be compared.
- **Disciplinary case files** – In order to develop a detailed understanding of the disciplinary process, information was gathered about cases, investigated under both sets of procedures, which had

² Forces used a variety of terms for the department responsible for the reactive investigation of police misconduct. For convenience, these are referred to as ‘C&D departments’. In some forces, the C&D department formed part of a unit with a broader remit for professional standards (see Miller, 2003).

resulted in a disciplinary hearing. Using standardised pro-forma tools, qualitative and quantitative data were captured from individual case files, at officer level, about the officer under investigation, the alleged incident, and key stages in the process. Data were gathered from a total of:

- 323 cases investigated under the old police discipline procedures between 1996/97 and 1998/99; and
- 89 cases investigated under the new police misconduct procedures (the data collection period lasted for, at least, 18 months).

The analysis draws on the all available case files. However, it excludes cases which were pending or did not result in disciplinary hearings, or those cases where files were not available (e.g. due to ongoing appeals or related civil actions). It should be noted that the amount, and level of detail, recorded in the case files varied greatly.

- **Interviews with officers involved in the disciplinary process** – To understand the reforms from a practical perspective, 29 in-depth interviews were carried out with officers with involvement in the disciplinary process. Interviews focused specifically on their views towards the reforms, the perceived impact of the changes, and the practicalities of using the procedures. Interviews were conducted after the new procedures had been in place for almost two years (February/March 2001). The sample included heads of department and investigators working in C&D departments, and superintendents with experience as a tribunal panel member (see Table 1).

Table 1: Interviews with officers involved in the disciplinary process

Sampling criteria	Number of interviews
C&D department officers	22
<i>Heads of department*</i>	(9)
<i>Investigating officers</i>	(13)
Superintendents (with tribunal experience)	7
Total	29

**Note: Includes a senior officer from one force with wider responsibility for professional standards.*

- **Individual and group interviews with operational police officers** – A series of individual and group interviews was carried out with operational officers in order to evaluate the impact of the reforms on police practice and morale. Interviews were conducted in January/February 2001. A qualitative approach was used to enable in-depth exploration of officers’ perceptions and experiences. This part of the evaluation was conducted by BMRB Qualitative, a specialist division of the British Market Research Bureau.

A total of 152 operational officers participated in 46 individual interviews and 15 group interviews. The individual officers in the sample were selected to ensure a wide range of views were reflected in the study. Factors used in the sampling process included rank, role, length of service, gender and ethnicity (see Table 2 below). Officers were generally drawn from across each of the sample forces. In the MPS, however, interviews were carried out in two police boroughs (Haringey and Hackney). The boroughs were selected to represent areas where police-community relations have, traditionally, been fragile.

The report

In the next chapter, the concept of misconduct and the details of the new misconduct procedures are briefly explored. In Chapter 3, the impact of the procedural reforms on the disciplinary process is examined. Chapter 4 focuses on how C&D officers have used the new procedures in practical terms and how the changes have affected the way misconduct is managed. Chapter 5 looks at the wider impact of the new misconduct procedures on operational police officers, particularly in terms of their confidence in the system, police practice and officer morale. Chapter 6 looks beyond the disciplinary process and describes a more holistic approach for dealing with police misconduct. In the final chapter, the main conclusions from the report are drawn together along with key recommendations.

Table 2: Individual and group interviews with operational officers

Sampling criteria	Group interviews	Individual interviews
<i>Force</i>		
Cumbria	11	6
Derbyshire	20	3
Essex	16	6
Greater Manchester	8	6
Northamptonshire	15	6
MPS	16	8
South Yorkshire	16	6
Surrey	4	5
<i>Gender</i>		
Male	64	35
Female	42	11
<i>Rank</i>		
Inspector	6	5
Sergeant	29	15
Constable	71	26
<i>Role</i>		
Uniformed officers	74	30
CID	20	8
Tactical Support Group	9	8
Other	3	0
Total no of participants	106	46

Note: Four officers had direct experience of the new misconduct procedures.

2. The new police misconduct procedures

This chapter begins with a brief examination of the previous research on police misconduct. In particular, it focuses on definitions of misconduct and the legal regulation of police practice. The chapter continues by detailing the key changes to the disciplinary process that resulted from implementation of the new procedures. Finally, the chapter explores the main aims of the procedural reforms and related issues for the evaluation.

Police misconduct and its regulation

Defining police misconduct

In the research literature, 'police misconduct' tends to be discussed alongside 'police deviance' and 'corruption'. The distinction between these concepts, however, is not always clear and can lead to definitional problems (see Punch,2000; Newburn,1999). In this report misconduct is understood to mean those activities which are in breach of internal police rules. Specifically, misconduct is grounded in the administrative, disciplinary and legal rules which are designed to regulate police practice.

In England and Wales, the Home Secretary has the statutory power to "make provisions with respect to... the conduct, efficiency and effectiveness of members of police forces and the maintenance of discipline" (s.50 Police Act 1996). The police disciplinary procedures, which are enabled by this power, are central in defining and regulating police misconduct. Although there is no discrete definition of what constitutes misconduct in either the old discipline procedures or the new misconduct procedures, both provide frameworks against which officer conduct can be judged. These frameworks, the Discipline Code and the Code of Conduct respectively, are discussed below (see also Appendices A and B).

Regulating police practice

What role do such formal disciplinary rules play in controlling police activities? Previous research on the legal regulation of policing shows that rules are generated from numerous sources and exert different levels of influence on police activity: "Because a rule exists, it does not follow that it rigidly governs day-to-day policing behaviour" (Smith, 1986). For police practice to be regulated, Smith argued that legal rules need to be internalised by officers. As a result, an important distinction is made between:

- working rules – those internalised by officers and which act as "guiding principles for their conduct";
- inhibitory rules – those taken into account by officers in deciding how to act, but not internalised; and
- presentational rules – those which justify police activity, but have no practical impact.

In addition, Dixon (1997) pointed out that some rules may be reactive, in that police management introduce them in response to a specific incident, and that can become routinised over time. He also argued that the impact of rules on police practice is not fixed or uniform. This emphasises the need to consider the context within which rules are introduced.

From this perspective, it is clear that rules prescribing ethical conduct must be meaningful to police officers if they are to influence decision-making and behaviour. It is also apparent that gaps may exist between the rules and actual police practice, and that the impact of those rules may not be constant.

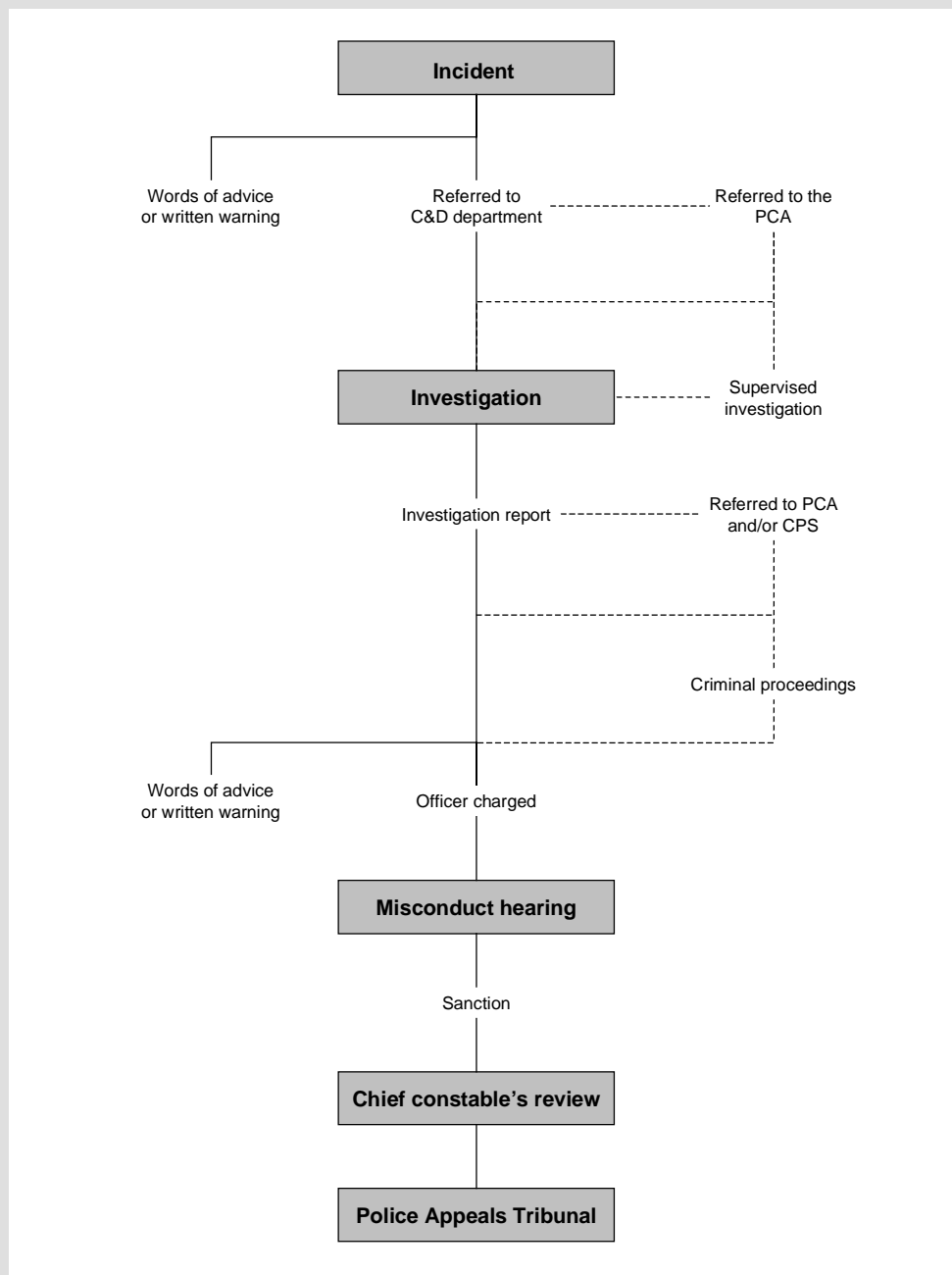
The new police misconduct procedures

The new police misconduct procedures are established in the Police (Conduct) Regulations 1999 and in the related *Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures* (Home Office, 1999). The procedures are broken down into a number of key stages;

these are illustrated in Figure 1 and are described in greater detail in Appendix C. The main reforms introduced by new misconduct procedures included:

- a lower standard of proof at hearings;
- tribunal panels to preside over disciplinary hearings;
- the ability for forces to hold hearings against officers in their absence;
- a new Code of Conduct setting out the ethical standards of police officer activity (replacing the existing Discipline Code);
- written warnings to address less serious cases of misconduct; and
- fast-track procedures to deal with serious incidents of misconduct.

Figure 1: Overview of the new misconduct procedures



Note: PCA refers to the Police Complaints Authority. CPS refers to the Crown Prosecution Service.

In addition to the main reforms, a separate framework for addressing unsatisfactory performance was introduced. Forces were also requested to apply the existing arrangements for ill-health retirement more rigorously in order to prevent officers retiring before the outcome of their case. Table 3 below provides a broad summary of the procedural reforms, highlighting the main differences between the two sets of procedures (see also Appendix C).

Table 3: Summary of the procedural reforms

	Old discipline procedures	New misconduct procedures
<i>Definition of misconduct</i>	Individual offences set out in the Discipline Code	Assessed against ethical standards set out in the Code of Conduct
<i>Sanctions available prior to hearings</i>	Words of advice, reprimand and divisional admonishment	Words of advice and written warning
<i>Hearings: standard of proof</i>	'Beyond reasonable doubt'	'Balance of probabilities'
<i>Hearings: presiding authority</i>	The chief constable (or their deputy)	A tribunal consisting of three panel members
<i>Appeals process</i>	Internal appeals process and appeal to the Home Secretary	Chief constable's review and appeal to a Police Appeals Tribunal

The aims of the procedural reforms

In order to evaluate the impact of the new misconduct procedures, like any initiative, it is important to consider what the intended outcomes were and how they were to be achieved.

The Home Affairs Committee (1998a) report and the Home Secretary's reply (Home Affairs Committee, 1998b) set out the broad aims of the new misconduct procedures; together they highlighted the key areas of concern with the existing procedures and set the context for the reforms. The main aims of the procedural changes, and related evaluation questions, are summarised below in Table 4. The table also sets out potential negative outcomes which the new procedures were expected to avoid.

A further aim of the new misconduct procedures was to improve public confidence in the disciplinary process. However, it is beyond the scope of this study to examine the impact of the reforms on individual complainants or the wider public. Given that research has shown that a central public concern is the lack of independence (Maguire and Corbett, 1991; Brown, 1988) and that the reforms not only affected the handling of complaints, it seems unlikely that the procedural changes will have had a significant impact.

Summary and conclusions

In this chapter, the evaluation has been placed in a wider context. In discussing definitional issues, it is clear that police misconduct refers not to a specific and unchanging set of activities, but to those practices which breach police rules and regulations. For example, under the new procedures, misconduct is defined in relation to the standards set out in the Code of Conduct. The chapter has also described the key stages of the new misconduct procedures. It is clear that procedural reforms aimed to improve the overall effectiveness of the disciplinary process. In addition, the changes were intended to influence the standard of police conduct and secure confidence in the process, whilst guarding against being overly punitive.

Table 4: The aims of the procedural reforms

Aims	Evaluation questions
<p><i>Outcomes</i></p> <ul style="list-style-type: none"> • dealing with ‘wrongdoers’ effectively • taking firm and effective action • increasing the proportion of proven cases • reducing delays and the impact of sickness 	<p><i>Outcomes</i></p> <ul style="list-style-type: none"> • has the number of investigations increased?* • has the number of charges per officer in each case increased?* • are charges more likely to be proven?* • do cases take less time to reach a conclusion?*
<p><i>Processes</i></p> <ul style="list-style-type: none"> • making it easier to discipline officers • developing a system more akin to standard employment practices 	<p><i>Processes</i></p> <ul style="list-style-type: none"> • are procedures seen as an effective and efficient management tool? • are there fewer barriers to disciplinary action? • is the process open, fair and consistent?
<p><i>Wider impact</i></p> <ul style="list-style-type: none"> • securing the confidence of police officers in the system • establishing clear standards of behaviour • improving police conduct 	<p><i>Wider impact</i></p> <ul style="list-style-type: none"> • are officers aware of the new procedures? • do they view the procedures positively – as fair, effective and efficient? • do officers have a clear understanding about what constitutes misconduct? • has reported officer behaviour improved?
<p><i>Potential negative outcomes</i></p> <ul style="list-style-type: none"> • that the standard of proof is too punitive and results in the withdrawal of officers from operational situations (Waddington, 1999) • police vulnerability to malicious complaints • damage to the morale and confidence of officers 	<p><i>Potential negative outcomes</i></p> <ul style="list-style-type: none"> • do officers see policing as riskier as a result of the procedural reforms? • have officers disengaged from potentially confrontational situations? • do officers feel threatened by the disciplinary system? • has job satisfaction or performance been negatively affected?

**Note:* Such increases might be expected because of the reduction in the evidence required to fulfil the ‘balance of probabilities’ and related changes. However, there are likely to be changes in unrecorded misconduct and recording practices which will mediate the impact of the reforms. Waddington (1999) has also, for example, questioned whether substantiation rates should be used uncritically as a measure of ‘success’.

3. Impact on the disciplinary process

In this chapter, we focus on the outcome of the reforms, looking specifically at the impact of the new misconduct procedures on the way cases are handled. To begin, the chapter examines the extent to which C&D department staff have used the procedures and whether they are perceived to be effective. The chapter continues by looking at whether the procedures have, or are perceived to have, affected the:

- volume and type of cases;
- extent to which officers have been charged with disciplinary offences;
- number of hearings and their outcome;
- perceived use and effectiveness of written warnings; and
- delays in the disciplinary process.

Implementation of the new misconduct procedures

Before the impact and effectiveness of the new misconduct procedures can be assessed, it is important to look at the implementation process.

The procedural reforms, as a whole, have been fully implemented in the sense that they are established and in place within forces; the new misconduct procedures are the only legal mechanisms available for dealing with officer misconduct. There remains, however, an important issue about the extent to which forces have had experience of using the procedures. For example, whilst the new misconduct procedures were seen by C&D department staff to be well-established, a small number of those interviewed said that that it was “still early days”. One investigating officer commented that use of the procedures was “still not crystal clear”. Statistical evidence also highlighted that experience amongst non-metropolitan forces of holding misconduct hearings was also relatively limited. Nevertheless, experience and knowledge amongst C&D department staff was reported to be increasing. There is also an issue about whether those involved in the disciplinary process have been sensitive to some of the changes, which is discussed primarily in Chapter 4.

The process of implementation within C&D departments was reported to have been relatively smooth. In most cases, a single officer was given responsibility for introducing the procedural reforms, working directly from the regulations and related Home Office guidance. In some cases, forces also drew on regional practitioner groups (with representatives from neighbouring forces) in order to discuss problems and share good practice. Several concerns were reported by C&D department staff to have been raised during implementation based on:

- the limited amount of time between the guidance being issued and the procedural reforms coming into effect;
- whether the new misconduct procedures complied with the Human Right Act 1998 and previous case law (e.g. *Pellegrin v France*³); and
- the interpretation of the procedures (particularly in terms of the ‘balance of probabilities’, rules of disclosure, admissibility of evidence, and *sub judice*).

The process of informing operational officers about the changes to police discipline varied considerably in the sample forces. The most extensive training was an input as part of a training day provided to all officers in the force (plus additional training for supervisors). At the other end of the spectrum, one force provided front-line officers with information by way of a written notice. Despite use of a wide range of training methods (e.g. divisional road shows, formal seminars, cascaded learning and intranet packages), the views of operational officers indicate that the new misconduct procedures have not been communicated widely or effectively (see Chapter 5).

³ It was ruled that public servants are excluded from the Article 6 of the European Convention of Human Rights (the right to a fair trial) in relation to their public service.

The process of implementation raises important issues about how the Home Office supports the delivery of procedural and policy reforms. With the new misconduct procedures, training material was developed centrally and disseminated to forces, which is to be encouraged. However, in rolling out significant policy changes, it is important that the Home Office understands the needs of forces and helps them to put the changes into practice (e.g. allowing an adequate 'lead-in' time for implementation and providing information directed towards C&D department work practices).

Perceived effectiveness of the new misconduct procedures

Overall, there was a widespread perception amongst C&D department staff that the changes to the disciplinary process had little impact in practical terms. A significant proportion of those interviewed stated that the procedures, despite being used fully, had not dramatically changed the way cases were handled: "How we deal with officers has not changed that much".

There was also a broad consensus that the new misconduct procedures were relatively effective at dealing with incidents of misconduct. However, the procedures were not necessarily seen to be more effective than the old discipline procedures: "It hasn't affected what we can and can't do". One officer pointed out that the new misconduct procedures were more effective at dealing with less serious offences as they were more susceptible to the lower standard of proof at hearings. One head of department, however, directly challenged the procedures' overall effectiveness. His criticism was based on specific difficulties experienced in their use and a perception that they had failed to "iron out" problems with the old discipline procedures (see Chapter 4).

The effectiveness of the new misconduct procedures can also be assessed in terms of their capacity to help detect misconduct. Although not a specific function of the procedures, there is a sense in which they provide a framework through which misconduct can be identified (i.e. the Code of Conduct) and outline the responsibility of supervisors in relation to managing conduct. Two-thirds of C&D department staff, however, felt that the new misconduct procedures were not effective in this area: "[they] help you deal with it, not to find it". Instead, C&D department staff highlighted proactive supervision, effective monitoring and cultural changes within the police as being more important. A small proportion of those interviewed felt that the reforms had been positive, primarily in promoting awareness of integrity issues and encouraging superintendents to take responsibility for problems at a local level (see Chapter 4).

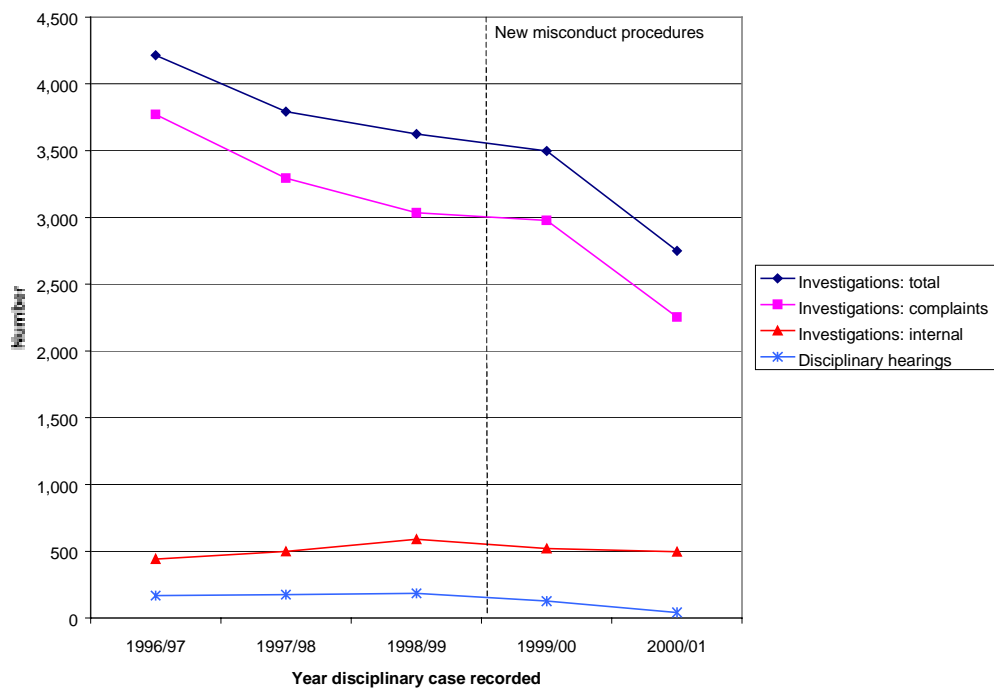
Impact on investigations and charges

Investigations

As highlighted in Chapter 2, key aims of the new misconduct procedures were to enable forces to take more effective action against officer misconduct and to remove some of the barriers to disciplinary action. It is, therefore, important to look at changes in the number of disciplinary cases handled by the sample forces. It may also throw some light on whether the procedural reforms have led to any unexpected changes.

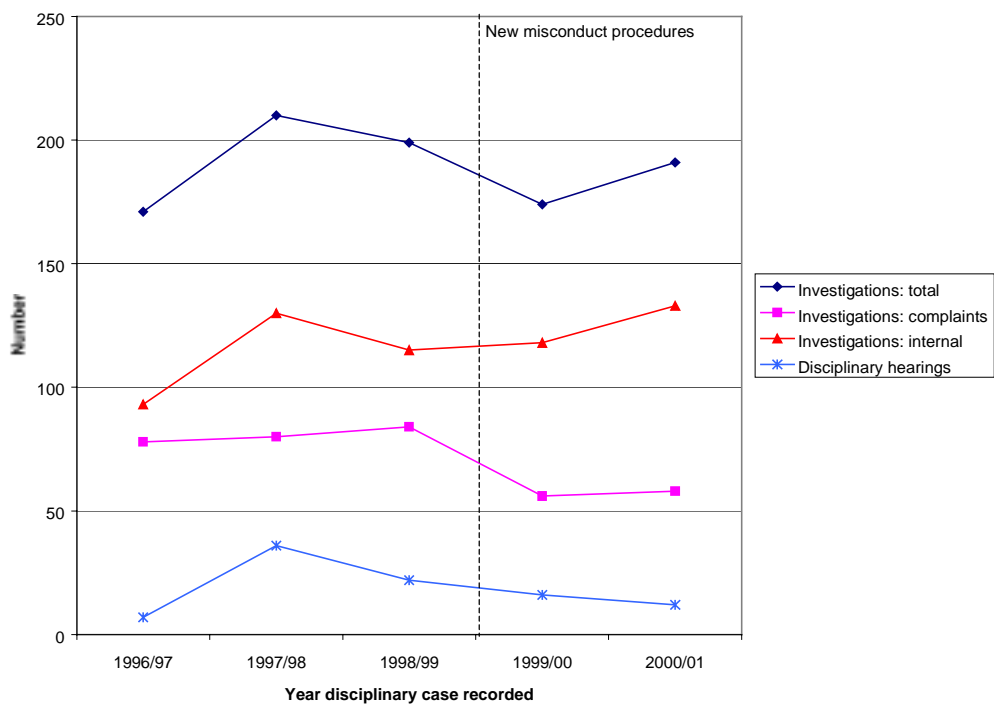
It is clear from Figures 2 and 3 below that the introduction of new police misconduct procedures has not led to an increase in the overall number of investigations as might be expected. It also appears that the experiences of metropolitan and non-metropolitan forces of using the procedures have been reasonably different; with the number of investigations decreasing and increasing respectively following the implementation of the reforms.

Figure 2: Investigations and hearings in metropolitan forces (1996/97 – 2000/01)



Note: Based on aggregated data from Greater Manchester Police, MPS and South Yorkshire.

Figure 3: Investigations and hearings in non-metropolitan forces (1996/97 – 2000/01)



Note: Based on aggregated data from Cumbria, Derbyshire, Northamptonshire and Surrey.

Examination of data from preceding years suggests that change since 1999/00 forms part of a longer-term trend. Figure 2 shows that the aggregate number of investigations in the three metropolitan forces has declined since 1996/97 by just over a third but that the rate of decline is greater after the new misconduct procedures. Much of this change can be attributed to a fall in investigations resulting from public complaints. In contrast, the level of internal investigations has remained relatively stable. Figure 3 shows that, in four non-metropolitan forces, the number of investigations has fluctuated, but that over the five year period has increased overall (10%). The increase has largely been prompted by a rise in investigations from internal sources over the same period. Also, some of the fluctuations can be linked to a drop in the number, and proportion, of investigations from complaints.

The research, therefore, suggests that the new misconduct procedures have not had dramatic impact because changes in the level of investigations after 1999/00 are broadly consistent with previous patterns. Furthermore, overall changes have not been consistent between metropolitan and non-metropolitan forces (although the context of change in each force will play a significant role). Interestingly, whereas investigations from complaints have declined, those generated by internal matters have remained stable or increased. This perhaps points more towards other factors (e.g. the reporting and handling of complaints, and force proactivity in addressing misconduct) rather than to the new misconduct procedures. It should also be noted that there are no data available on the 'dark figure' of misconduct (activities which are not reported to, and recorded by, C&D departments). As a result, it is not possible to say whether changes have been affected by underlying trends in officer misconduct.

To some extent, the views of C&D department staff reflect the statistical picture. Most C&D department staff, including those from metropolitan forces, reported that the new misconduct procedures had not prompted a significant change in the number of investigations. The prevailing view was that disciplinary cases were at a "broadly similar" level as before and that the procedural changes had "not opened up the stable door". Some officers added that the nature of the incidents under investigation had not changed significantly either: "The regulations have not changed what we are dealing with". From this perspective, C&D departments have had the "same sort of cases coming in".

One investigating officer, in particular, provided a reason for the perceived lack of change. He argued that the number of cases had not changed significantly because use of disciplinary process was "demand-led"; the procedures were a reactive tool for dealing with reported incidents of misconduct. Indeed, amongst those who reported a rise in the number of cases, there was a perception that this was linked to increased reporting amongst the public and the development of a more proactive approach to misconduct.

It should be noted that a small minority reported a change in the number of disciplinary cases and that this had been prompted by the new police misconduct procedures. Views on the direction of this change were evenly split. There was a relatively strong view that a reduction in the number of investigations was a direct result of minor cases being dealt with effectively by warnings: "[We're] not referred trivial cases as they're dealt with via written warnings".

The number of disciplinary charges

One possible change prompted by the reforms might be an increase in the number of charges brought against officers under investigation. This might be expected because of the increased likelihood of charges being proven at a disciplinary hearing (for the same type of misconduct). There was, however, no evidence to suggest that the number of charges rose.

There was no universal view amongst C&D department staff about the impact of the new misconduct procedures on the number of charges. About one-third of those interviewed reported no change in the charges brought against officers or the level of evidence required in bringing charges: "The same process is worked through... it does not affect the charging [of officers]". Amongst the remaining respondents there were no commonly held perceptions. Only a small number of those interviewed reported that the number of charges had increased as a direct result of the 'balance of probabilities': "I feel we charge more due to the lower standard of proof". Some also added that the likelihood of the

PCA substantiating charges had also increased (although this was not a widely held view). Given the provisional statistical evidence and range of views expressed, it seems likely that such increases are localised and perhaps based on experience of individual cases.

It should be noted that an increase in charges was not always viewed in positive terms; one head of department argued that the reforms had led to the “over-charging” of officers. This, was seen to have caused, along with related problems with the Code of Conduct (see Chapter 4), a particular case being dismissed at a disciplinary hearing.

Provisional evidence from the disciplinary case files also indicated that there had been no increase in the average number of charges per officer in each case (1.7 charges under the new misconduct procedures compared to 2.1 charges under the old discipline procedures⁴). It should be noted that there were annual variations and that the overall change is likely to be part of a more general trend.

Impact on disciplinary hearings

As noted in Chapter 2, one possible result of the reforms might have been to increase the number of cases going to disciplinary hearings and the proportion of those being proven.

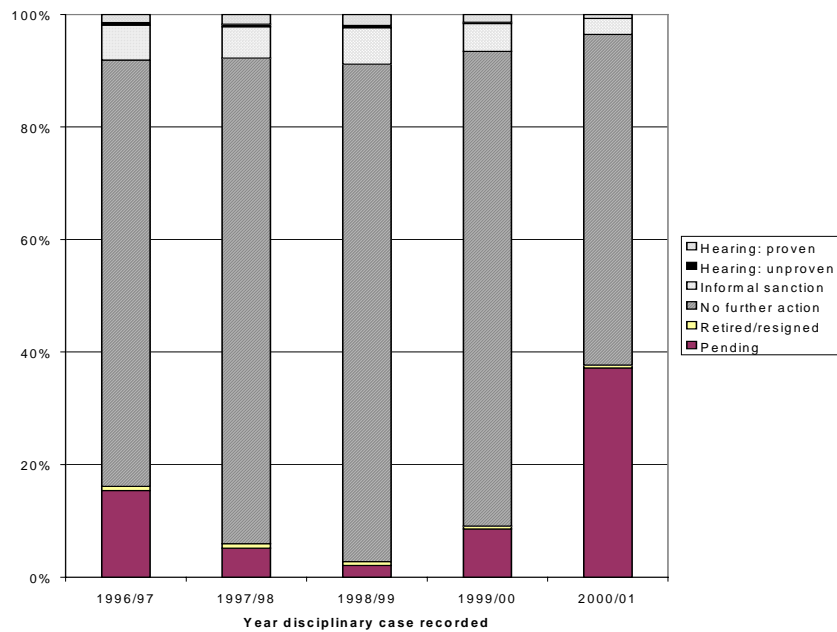
However, looking at Figures 2 and 3, it is clear that the new misconduct procedures have not led to an increase in the total number of disciplinary hearings. Indeed, the number of hearings carried out after the reforms does not appear to be as high as in previous years and, in the metropolitan forces, has declined slightly. It should be noted, however, that this is only a provisional finding and is likely to change over time. Because a high proportion of cases recorded in 2000/01 remain pending, the total number of hearings in that year is likely to increase over time as those cases eventually reach a conclusion.

The number of cases which remain pending under the new misconduct procedures also prevent robust conclusions being drawn about the outcome of cases. However, the limited evidence available suggests that, for those cases that have reached an outcome, the proportion proven at hearing has not increased significantly. Figures 4 and 5 show that, despite a relatively high proportion of pending cases in 2000/01, the outcome of completed cases is broadly in line with previous years. This finding must be treated with a high degree of caution because, in the longer-term, the result of the pending cases might have a major effect on the statistical picture. It is, therefore, difficult to say with any degree of certainty whether the outcome of cases has changed under the new misconduct procedures; this should be monitored on an ongoing basis.

It is interesting to note some of the differences in the pattern of outcomes between metropolitan and non-metropolitan forces. For example, it is clear that a higher proportion of cases result in no further action in the metropolitan areas. This might be because a higher number of investigations in those forces result from complaints; MPS figures suggest that such cases are more likely to result in no further action compared to those from internal sources (82% compared to 37% from 1996/97 – 2000/01).

⁴ Analysis does not include cases from criminal convictions as they were over-represented in the sample of misconduct files.

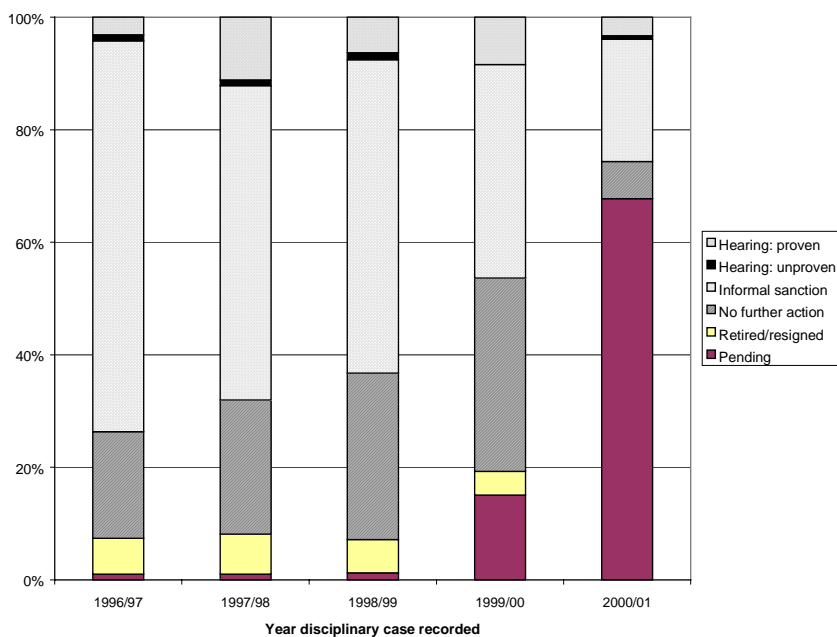
Figure 4: The outcome of officers' investigations in metropolitan forces (1996/97 – 2000/01)



Note:

1. Based on aggregated data from Greater Manchester Police, MPS and South Yorkshire.
2. 'Hearing: proven' includes cases where, at least, one charge was proven against an officer.
3. 'Hearing: unproven' includes cases against officers not proceeded with at hearing.
4. 'No further action' includes cases which resulted in other outcomes.

Figure 5: The outcome of officers' investigations in non-metropolitan forces (1996/97 – 2000/01)



Note:

1. Based on aggregated data from Cumbria, Derbyshire, Essex (1997/98 – 2000/01) and Surrey.
2. 'Hearing: proven' includes cases where, at least, one charge was proven against an officer.
3. 'Hearing: unproven' includes cases against officers not proceeded with at hearing.
4. 'No further action' includes cases which resulted in another outcome.

Written warnings

As written warnings were a new disciplinary sanction under the new misconduct procedures, their evaluation focuses on their use since April 1999. It is clear that the use of warnings increased substantially after their introduction. In the sample forces, the total number of written warnings issued went up from 174 to 254 in the first two years, an increase of about 45%. Written warnings were seen by C&D department staff as one of the most significant procedural changes; about two-thirds viewed them in positive terms. The remaining third tended to be neutral about written warnings; only one officer highlighted negative aspects of the sanction.

However, there were considerable doubts about how extensively written warnings had actually been used. There was a general perception amongst those interviewed that warnings were not used fully or that their use was patchy and inconsistent between different divisions; only a small proportion reported widespread and consistent use. Reflecting the statistical picture, a few C&D department staff stated that the number of warnings issued was increasing, primarily because initial problems with their use had been resolved.

It should be noted that, in the sample forces, written warnings were often issued at a local level by divisional commanders. In other forces, however, use of written warnings is the direct responsibility of C&D departments. The findings contained in this report, as a result, draw on the particular experiences of the sample forces.

Box 1: Views on the use of written warnings

Main strengths

- **An intermediate sanction** – There was a strong view that written warnings were a flexible management tool, bridging words of advice and disciplinary hearings. They were also seen to be relatively formal and an effective deterrent: “It’s made officers aware that the organisation is willing to address bad behaviour”.
- **Proportionality** – Some respondents reported that written warnings introduced an element of proportionality into the disciplinary process (in keeping with the Human Rights Act 1998). They enabled minor incidents to be addressed at a local level, thereby avoiding excessive and lengthy proceedings.
- **Filtering out cases** – As mentioned earlier, a small number of those interviewed reported that warnings reduced the number of incidents referred for investigation. One officer described warnings as an “effective way of dealing with things which may have gone to a tribunal previously”.
- **Local responsibility for misconduct** – There was a clear perception that responsibility for challenging misconduct had shifted towards divisional commanders. One respondent highlighted the importance of local management support provided by an officer with dedicated responsibility for misconduct issues.

Main problems

- **Problems in accepting guilt** – A small number anticipated problems in requiring officers to admit to failures in standards as this would trigger more formal and excessive disciplinary action. It was seen by one officer to have caused resentment amongst operational officers: “Some think it’s put them over a barrel. They think they are in a Catch-22 situation”. Only one force reported direct experience of this problem.
- **Inconsistency** – In some cases, only a few divisional commanders were reported to have used the sanctions. Concerns were also raised about how they were being used; in one area they had been used to address relatively serious problems (e.g. a criminal conviction and a drug-related

Box 1: Views on the use of written warnings

incident).

- **Lack of central management** – Where use of warnings was reported to be limited, there was evidence that there had been:
 - a failure to market written warnings sufficiently at a local level;
 - a lack of support and guidance provided to divisional commanders on their use; or
 - complicated and bureaucratic processes implemented at a local level.

These problems point to the need for central management to oversee and support the local use of written warnings. Some forces had, or were developing, mechanisms to help ensure greater consistency. One example required divisional commanders to contact the C&D department in order to discuss the incident, whether a warning was appropriate, and how it would be framed.

Reducing delays in the disciplinary process

Timescales

As shown in Chapter 2, one of the main problems identified with the old police discipline procedures was the length of time taken for individual cases to reach a conclusion. The length of the process has been shown to be a major concern of both the police and public, contributing to officer stress and dissatisfaction amongst complainants (Home Affairs Committee, 1998a; Maguire and Corbett, 1991; Brown, 1987). There is some provisional evidence to suggest that the process has become quicker.

Analysis of the disciplinary case files shows that there has been a reduction in the time taken for cases to be concluded. Looking at the cases where dates were available, the average timescale between the regulation notice being served and the conclusion of the hearing fell from 301 days under the old discipline procedures to 190 days under the new misconduct procedures. Moreover, whereas almost all misconduct cases (99%) were concluded in less than 480 days, 84% of cases handled under the old discipline procedures were concluded over the equivalent timescale.

The scale of improvement should be treated with a degree of caution because the timescales for cases under the new misconduct procedures are likely to be artificially short; a higher proportion of those cases resulted from criminal convictions⁵ and their timescales will also have been ‘capped’ by the two year data collection period. Analysis of more comparable cases also points to an overall improvement; cases from criminal convictions (lasting less than two years) took less time between the regulation notice being served and the conclusion of the hearing (i.e. 92 days, on average, compared to 112 days under the old procedures). However, because this is based on aggregated data, it is unlikely that the scale of the improvement would have an impact on individual cases at a local level. There is also a wider question prompted by these timescales about how reasonable and effective the disciplinary process is as a management tool to deal with misconduct.

Overall, C&D department staff were negative about the impact of the new misconduct procedures on reducing delays in the system. Over half of those interviewed stated that they had no effect on the length of time taken for cases to be concluded. Only a small number said that the procedural changes had been effective, pointing to:

- the use of written warnings to deal with minor incidents;
- the fast-track procedures (although used rarely by forces); and
- the ease with which tribunals could be arranged: “The system allows hearings to happen more quickly”.

⁵ Cases from criminal convictions tend to take less time to complete because disciplinary action is based on the conviction, not the initial incident.

Two officers argued that other factors were more important to reducing timescales. For example, the use of time limits was seen as particularly effective. The Best Value review, and subsequent restructuring, of the C&D department in the MPS was reported to have made the disciplinary process more effective and efficient.

Timescales were reported to be a significant problem by C&D department staff; several contributing factors were identified (see Box 2). In one force, six cases in succession were dismissed at the hearing stage because the delays were judged to be unreasonable and an abuse of process.

Box 2: Perceived factors contributing to delays

Work levels and resources

The number of investigations was highlighted by some officers as a concern: “I may have 10 or 12 investigations... [which requires] a juggling of jobs”. This was seen to be exacerbated by the lack of staff and other resources.

Investigations

Investigations were often seen by C&D department staff to be inherently lengthy because of the demands of evidence gathering. The following were identified as contributing factors:

- the level of bureaucracy;
- geographical problems faced by rural forces (e.g. arranging and attending interviews);
- the *sub judice* rules (which require criminal proceedings against complainants to be concluded before disciplinary procedures can commence); and
- problems related to officers being legally represented (e.g. no comment interviews, additional requests for files, and the submission of additional witnesses just before deadlines).

Referred cases

Concerns were raised about the time taken for investigation reports to be considered by the PCA and, to a lesser extent, the CPS; delays were generally seen as a result of under-resourcing. One officer felt that the PCA was overloaded and that forces could target information better: “We send too much to the PCA... [we’re] sending a Rolls-Royce when the PCA might want a Fiesta”.

Disciplinary hearings

Although some officers stated that tribunals were easier and quicker to arrange under the new misconduct procedures, problems were still identified in terms of scheduling.

Delays due to sickness absence

The Home Affairs Committee (1998a) drew attention to delays generated by “the sickness – or claimed sickness – of the officer who is subject to disciplinary proceedings” and, in particular, the potential for abuse of the sickness absence system. Such problems were not seen by C&D department staff to have been addressed by the new police misconduct procedures; about half those interviewed stated that the procedural reforms had not restricted the ability of officers to avoid disciplinary action through sickness absence or ill-health retirement. A significant proportion felt it remained a significant problem: “[It’s a] big issue for the public who see it as a ‘get out of jail free’ card”. A small number added that the problem was growing; they perceived a cultural shift towards officers taking so-called ‘tactical sick leave’ to adversely affect the investigation process.

However, it is important to note that roughly a quarter of C&D department staff reported that they had no experience of the problems reported by the Home Affairs Committee. Several C&D department staff pointed to the need to deal with genuine sickness appropriately and not “hit them with a hammer

when they're down". Previous research by Maguire and Corbett (1991) into the complaints system has shown the investigations can be stressful for officers.

Summary and conclusions

As noted in Chapter 2, the aim of the new misconduct procedures was to make the disciplinary process more effective. However, the views of those in C&D departments cast doubt on whether the new procedures are more effective or have resulted in any significant changes. For example, there was no evidence to suggest that the reforms prompted an increase in the number of charges against officers as might be expected. Provisional evidence suggests that the outcome of cases has not changed significantly, although it is too early to say for certain because of the number of pending cases. There was strong support amongst C&D department staff for written warnings which were seen as an effective management tool for dealing with less serious cases of misconduct. Provisional evidence also pointed to improvements in the time taken for cases to be concluded (although identified as a remaining problem by those interviewed).

Key findings

- In general, the new misconduct procedures were seen by C&D department staff to be well-established, although specific concerns were raised about the timing of the guidance, human rights, and interpreting of the procedures. This highlights the importance of the Home Office in providing implementation support for the delivery of the reforms.
- There was a widespread view amongst C&D department staff that the procedural reforms had little impact in practical terms. There was also a broad consensus that they were relatively effective at dealing with misconduct, but no more effective than the old discipline procedures.
- Statistical evidence showed that the new misconduct procedures have not led to an overall increase in the number of investigations and that changes experienced by the sample forces were likely to be part of longer-term trends. Most C&D department staff agreed that there had not been a significant change in the number of investigations.
- Analysis of disciplinary case files pointed to a slight reduction in the average number of charges brought against officers (rather than an increase which might have been expected). There was no universal view amongst C&D department staff about the impact of the new misconduct procedures on the number of charges.
- It is clear that the new misconduct procedures have not led to an increase in the total number of disciplinary hearings. There was also no evidence to suggest that they had a significant impact on the proportion of cases proven at disciplinary hearings.
- The use of written warnings increased substantially in the sample forces after their introduction. Written warnings were seen by C&D department staff as one of the most significant procedural changes; about two-thirds viewed them in positive terms. Concerns were raised, however, that their use had been patchy and inconsistent at a local level.
- Analysis of the disciplinary case files showed a reduction in the time taken for cases to be concluded. However, C&D department staff were negative about the impact of the new misconduct procedures on reducing delays in the system, including those generated by officer sickness.

4. Impact on Complaints and Discipline departments

In evaluating the impact of the reforms, it is important to understand how the new misconduct procedures have affected the process of disciplining officers. This chapter, therefore, looks at how C&D department staff have used the new procedures in practical terms and whether the way misconduct is managed has changed.

To begin, the chapter looks at the investigation process, including key work practices and the impact of the standard of proof. The process of charging officers with disciplinary offences is then examined, with particular attention being paid to the role of the new Code of Conduct. The chapter continues by exploring the perceived impact of changes made to disciplinary hearings. Finally, the decision-making processes of misconduct tribunals are examined in detail. The impact of other elements of the new misconduct procedures is outlined in boxes throughout the chapter.

Formal investigations

The majority of investigating officers and departmental heads reported that the new misconduct procedures had not greatly changed the investigation process.

Regulation notices

There was no evidence to suggest that the way regulation notices were served on officers under investigation had changed. For investigating officers, the most important factor was to serve a notice against an accused officer as soon as practicable. Of growing importance, however, was the actual wording of notices. Several investigating officers, for example, reported that they would frame notices in vague terms, referring to the allegation against the officer rather than specific elements of the Code of Conduct. One investigating officer added that, because the notices define the scope of an inquiry, a specific notice “may hamper the investigation”. Use of broadly framed notices was also seen as a safeguard against possible legal challenges and employment tribunals.

Interviews

C&D department staff did not report any significant differences in the way they carried out disciplinary interviews.

A small number, however, stated that there was initial confusion under the new misconduct procedures about interviewing officers where criminal offences were suspected. This confusion was prompted by questions about the different standards of proof used in the criminal and disciplinary arenas, and the need to use the criminal caution. Consensus appeared to have developed across the sample forces that two interviews were needed in order for the criminal and disciplinary elements of a case to be dealt with separately.

One investigating officer highlighted problems with this approach. First, he questioned whether the officers being interviewed recognised the purpose of the two interviews: “Officers don’t understand the difference”. Second, concerns were raised about the admissibility of evidence from criminal interviews. A specific example was described involving an officer who was interviewed, under caution, about alleged criminal offences. During that interview, the officer made a statement in which they admitted to breaching the Code of Conduct. However, in the misconduct interview that followed, the officer refused to accept the statement made whilst under caution.

There was a suggestion from a number of officers that the Home Office guidance should be clarified. A small number, for example, raised concerns about the rules of disclosure. One officer added that there were significant variations in the level of disclosure allowed in different forces.

Impact of the standard of proof

In general, the change in the standard of proof was not seen to have affected the investigation process. C&D department staff said that the same level and types of evidence would be gathered during an investigation. Some officers were aware, however, that the outcome of cases had changed under the new misconduct procedures:

The process of investigation is the same and will always remain the same [even though] the disposal may be different.

(Investigating officer)

There was a strong view that the investigation process should be “a search for the truth”, and that investigations were not simply a question of gathering a sufficient level of evidence to satisfy a particular standard of proof. A few officers considered this to be even more important following the introduction of the lower standard:

[You] shouldn't get enough to prove on the 'balance of probabilities' [but] should get all the evidence.

(Investigating officer)

With the 'balance of probabilities' [being at the] lower end, [you] go a step further, find more evidence to substantiate it.

(Investigating officer)

A small number of those interviewed raised concerns about use of the lower standard of proof during investigations, commenting on its apparent limited impact. They questioned whether police practices during investigations had changed in line with the 'balance of probabilities' and whether the standard of proof had been implemented fully:

There is a reluctance to get away from the old burden of proof. I saw [the change] as an opportunity to deal with officers' wrong-doing.

(Investigating officer)

Box 3: Adapting to the lower standard of proof – an example

An example was described by one senior investigating officer in which decision-making during investigations had not responded fully to the 'balance of probabilities'.

Supervision of investigation reports, in one force, revealed that investigators were not considering the new standard of proof fully in deciding whether to substantiate allegations of misconduct. It was reported that both the criminal and disciplinary elements of individual cases were examined on the same level of evidence, rather than in line with the two different standards of proof. As a result, the senior investigating officer said that investigators were “not recommending [misconduct] charges when they should have”.

Because of a similar experience in another force, a formal process was introduced to review cases referred to the CPS, but where criminal charges were not brought. The senior investigating officer reported that the review resulted in an increase in the number of misconduct charges. It should also be noted that other checks usually exist for such decisions.

Misconduct charges – applying the Code of Conduct

As described in Chapter 2, an officer can be subject to disciplinary action if their conduct falls below the positive standards set out in the Code of Conduct (see Appendix B). As such, the principles set out in the Code of Conduct form the basis for charging officers with disciplinary offences. As noted earlier, however, the Code of Conduct is significantly different to the Discipline Code in that it does not

contain specific offence classifications (e.g. 'abuse of authority'). As a result, it is important to understand whether, and in what ways, the work practices of C&D departments have been affected by this change.

In general, it was clear from those interviewed for the study that the charging of officers had become a more involved and detailed process following the introduction of the new Code of Conduct. In discussing how they formulated charges, C&D department staff often described how they scrutinised and "fitted" an officer's alleged behaviour around the Code of Conduct. This tended to involve:

- examining the allegations against the accused officer to identify the substantive elements of their behaviour; and
- comparing those elements against the Code of Conduct to determine whether the officer's behaviour amounts to misconduct.

C&D department staff expressed a wide range of views about using the Code of Conduct for charging. To many, the new Code of Conduct was not viewed as a major change. A significant minority of those interviewed did not report any problems in using or interpreting the Code of Conduct and, to some, its introduction was viewed positively. The broad guiding principles set out in the Code of Conduct were, in particular, flagged up because they:

- cover the same areas as the Discipline Code, but describe behaviour in positive, rather than negative, terms;
- provide greater flexibility in challenging officer misconduct: "[It] doesn't constrain as much as the old procedures";
- led to increased scrutiny of officers' conduct at the charging stage; and
- are more up-to-date: "[It] relates to the year 2000 rather than the 1800s"; "The old code was draconian, [but is] now in tune with the modern police service".

Despite these views, a significant proportion of C&D department staff felt that it was more difficult to charge officers using the new Code of Conduct. One departmental head, for example, observed that "the only stumbling block sometimes is with forming charges". The wording and overall approach of the Code of Conduct were singled out by those interviewed for particular criticism. They felt that the principles set out in the code were open and imprecise, describing them as "vague", "smoky" or "wishy-washy". One experienced head of department stated that, because the Code of Conduct was non-specific and lacked clarity, it was a "nightmare" to use. In comparison, C&D department staff pointed to the offences in the old Discipline Code and, to a lesser extent, in criminal law as being more clearly defined:

The old regulations had clear and reasonable definitions.

(Head of department)

With the new [Code of Conduct] you have to search for what you can charge someone with.

(Investigating officer)

In this context, it could be argued that the Code of Conduct is closer to a policy ("a statement of guiding principles that should be followed in [police] activities") rather than a rule ("a specific requirement or prohibition") (Carter and Barker, 1991).

Because of its perceived openness, use of the Code of Conduct was seen to require a greater degree of interpretation in formulating misconduct charges. A small number of those interviewed said that this could be a problem because it involved applying positive standards of conduct to allegations of negative behaviour. As one investigating officer commented: "[It's] difficult to shoehorn charges around an aspirational code". Another officer commented that the standards of behaviour were too abstract and not grounded in policing practice. Examples might be the principle of 'honesty and integrity' which does not define integrity in a police context or what reasonable force means under 'the use of force and abuse of authority'.

Whilst negative views were generally directed to the Code of Conduct as a whole, specific elements of it were highlighted as having caused problems:

- Concerns were raised about the principle of ‘general conduct’ whereby an officer can be subject to disciplinary action if they act in a way which is likely to discredit the force, whilst either on or off duty (see Box 4).
- One investigating officer highlighted difficulties in using ‘sobriety’ to charge officers for use of illegal drugs because the principle only refers to the consumption of alcohol.
- Concerns were also raised by one investigator about the phrase “officers must never knowingly use more force than is reasonable” (‘use of force and abuse of authority’). This was seen to be problematic because it referred to an officer’s intentions (i.e. knowing acts of misconduct) rather than a more objective basis. It should be noted that the term “knowingly” was used more frequently in the Discipline Code.

Box 4: Problems with the principle of ‘general conduct’

Two main concerns were raised about the principle under the new Code of Conduct referring to officers’ ‘general conduct’:

- **An all-inclusive code** – ‘General conduct’ was often seen a “catch-all”; a very broad category which could be applied to almost any type of behaviour. One investigating officer pointed out that, because of problems with interpreting other parts of the code, officers were being charged with being in breach of ‘general conduct’ by default: “It’s fudged matters. We are relying on paragraph 12 [‘general conduct’] for things you cannot put against other codes”.
- **Off duty behaviour** – It was clear from the interviews that the sample forces were interpreting and applying ‘general conduct’ differently in relation to off duty behaviour. Whilst common for C&D department staff to judge “each case on its merits”, opinions were wide-ranging. For example, whilst one officer had used the charge “liberally”, another regarded it as “an invasion of civil liberties”. There was also evidence that a range of criteria was used to determine whether to bring disciplinary action. The following criteria were identified:
 - The officer brought discredit on the police service (as in the Code of Conduct).
 - The officer was known by the complainant to be a member of the police. *Alternative view: this can include personal matters irrelevant to policing (e.g. neighbour/domestic disputes).*
 - The officer identified themselves to be a member of the police (e.g. producing a warrant card or making an arrest). *Alternative view: in identifying themselves, officers are on duty.*
 - The officer could be dismissed from the force for their conduct. *Alternative view: it can be difficult to judge the severity of behaviour (and likely sanctions) prior to a hearing.*

Overall, the negative views towards the Code of Conduct concentrated, primarily, on the principles being open to interpretation. Staff from C&D departments, as a result, argued that the new Code of Conduct invited a greater degree of subjectivity and discretion into the disciplinary process.

Examination of the detailed case profiles shows that there is scope for the Code of Conduct to be interpreted and applied in different ways. Table 5 shows that, in some cases, the allegations against an officer are not completely covered by the misconduct charge, and that other or additional parts of the Code of Conduct may have been breached. Analysis of cases resulting from a criminal conviction is, however, more revealing. Whereas criminal convictions always resulted in a ‘criminal conduct’ charge under the old discipline procedures, similar cases under the new misconduct procedures did not necessarily lead to ‘criminal offence’ charges. In one sample force, officers found guilty at court were often charged under different parts of the Code of Conduct. Examples of criminal convictions and their related misconduct charges include:

- the possession of illegal drugs: ‘general conduct’ and ‘honesty and integrity’;

- the theft of a bicycle: 'honesty and integrity'; and
- drink-driving: 'general conduct'.

Table 5: The coverage of misconduct charges – examples

Main aspects of the allegation	Misconduct charges brought	Alternative breaches to the Code of Conduct?
A supervisor was physically and verbally abusive to a junior officer	Politeness and tolerance	Use of force and abuse of authority
An officer deliberately damaged drugs paraphernalia seized forcibly from the complainant during a search	Use of force and abuse of authority	Property
An officer discharged a firearm because they failed to comply with the procedures	Lawful orders	Performance of duties
An officer made inappropriate comments on the call handling system	Lawful orders	Politeness and tolerance

Such analysis, although not providing conclusive evidence, raises questions about whether the flexibility of the new code has the potential to result in cases being handled inconsistently or, at the very least, differently. It is also more likely that inconsistencies will emerge in the absence of a framework which illustrates the Code of Conduct and allows information on cases and C&D department work practices to be shared.

Box 5: Views on the fast-track procedures

Experience of using, or planning the use of, the fast-track procedures was limited in the sample forces. Of the 89 misconduct cases profiled for the study, only two had been fast-tracked; both resulted from a criminal conviction (i.e. theft and drugs possession). Amongst those forces with some experience, no problems were reported in terms of the practical application of the procedures. However, strong views were expressed by C&D department staff on why the procedures had not been used extensively. Three factors were identified:

- **Procedural criteria** – Most forces reported that cases had not been fast-tracked because they did not meet the necessary criteria. The cases were not seen to be sufficiently serious and, to a lesser extent, did not involve overwhelming evidence. Because of the level of evidence required, one investigator said that fast-track was “a dead duck”.
- **Human rights** – A significant proportion of C&D department staff commented that fast-track “doesn’t stand up in human rights”, particularly in relation to Article 6 of the Human Rights Act 1998 which sets out rights to a fair trial.
- **Criminal proceedings** – Concerns were raised about the impact of fast-track on ongoing criminal cases, particularly its potential to jeopardise proceedings against the accused officer. Respondents in one force referred to a particular case in which fast-track was put back until the conclusion of a related criminal case.

Disciplinary hearings

As mentioned in Chapter 2, the new misconduct procedures introduced two key changes to the way disciplinary hearings were carried out, namely:

- a reduction in the standard of proof; and
- the replacement of the presiding officer with a tribunal panel.

The 'balance of probabilities'

There was no prevailing view amongst officers from C&D departments about how the 'balance of probabilities' had affected disciplinary hearings. At one extreme, there was a view that change in the standard of proof had little impact on the outcome of cases. A small number of those interviewed questioned whether panels were taking account of the lower standard of proof fully. They argued that decisions were effectively being based on 'beyond reasonable doubt':

[It's] made little difference. It should be applied more rigorously.

(Investigating officer)

One head of department, for example, described a "perverse decision" of a tribunal panel to dismiss charges against an officer, whom he thought was guilty, because it was based on a high standard of proof. Another officer suggested that panel members have found it difficult to adapt to the new standard:

ACPO have had trouble getting their heads 'round it... it's more complex.

(Investigating officer)

At the other extreme, a significant proportion of staff reported that tribunal panels were using the 'balance of probabilities'. They added that, in practice, this translated itself into a sliding scale of proof as outlined in the Home Office guidance. Although it was not clear from the interviews what the sliding scale meant in practical terms, there was evidence to suggest that more serious cases were scrutinised to a higher standard of proof:

The higher the case, the higher the standard of proof.

(Investigating officer)

[There's] a clear difference between the ends of the scale.

(Head of department)

It's harder to prove for more serious cases as it's basically the same standard of proof [as with the old discipline procedures].

(Head of department)

For a small number of those interviewed, use of the lower standard of proof at hearings was reducible to a simple, and in their view questionable, 'counting' exercise. They were concerned that a single credible statement made against an officer would simply be outweighed by two statements made in support of the officer (or vice versa). One investigator, however, highlighted the importance of obtaining independent evidence from a third party in order to satisfy the 'balance of probabilities'.

Impact of tribunal panels

A clear majority of C&D department staff viewed the introduction of tribunal panels as a positive and useful step. The inclusion of superintendents at this stage as tribunal panel members was seen to be a significant improvement for the following reasons:

- **Grounded experience** – In general, superintendents were seen to bring a more grounded perspective to decision-making: "They bring knowledge of what's happening at ground level". They were viewed as being "closer to the action" and were often "steeped with experience". As one investigator said: "Superintendents are more in tune with operational officers".
- **Fairness and effectiveness** – Many respondents felt quite strongly that tribunal panels made more effective decisions at hearings in the sense that, as one officer said, "two heads are better than one". C&D department staff also saw panels to be fairer, being both consensual and open: "It allows for better discussion". It should be noted that a small minority were more critical. For

them, tribunal decisions were weaker than those made by the chief constable: “The consensual approach waters things down”. One investigating officer added that the outcome of decisions was also more variable: “When the chief constable sat, everyone knew his viewpoint”.

- **Scheduling** – Because of panel members’ flexibility and availability, hearings under the new misconduct procedures were relatively easy to arrange. One officer noted, for example, that under the old discipline procedures “it was always difficult to get a date in the chief constable’s diary”. A small number of those interviewed challenged this view, suggesting that the process had become more bureaucratic: “You need to get hold of three people instead of one”. Smaller, more rural forces reported further problems because of the limited number of superintendents (without prior knowledge of the case) available to sit on panels.
- **Leadership** – Just over a third of those interviewed said that the oversight of officer conduct had been affected by the introduction of tribunal panels. In some forces, the introduction of panels was reported to have prompted local ownership and management of problems, because of superintendents’ increased knowledge of misconduct issues: “Superintendents take away experience and can use it on division”. The exclusion of chief constables at the hearing stage was not seen to have changed the oversight given to misconduct issues; chief officers were reported to still play an important role in the disciplinary process.

Tribunal panels and decision-making

It was clear from superintendents interviewed for the study that panel decisions were based on open discussions between the three panel members. The decision-making process was also described as having been fair, open and relatively consensual. No concerns were expressed about how the individual panel members worked together; they had “all got an equal part” in the process. The relationships between the panel members are, however, likely to be more complicated because of the rank structure; one respondent said that although members did not have “equal status”, the superintendents had been “treated with respect” by the chief officer.

The interviews with superintendents also revealed how tribunal panels determine whether charges have been proven and decide upon an appropriate sanction:

- **Proving charges** – Although there were slight variations in the way panels were managed, their discussions tended to focus on the validity and strength of the evidence, the quality of the defence, and specific legal issues (e.g. the Human Rights Act 1998).

The standard of proof was highlighted by superintendents as being significant in the decisions of tribunal panels. In general, panel members felt that the lower standard provided an opportunity to deal with misconduct effectively. As one officer pointed out, “having to prove ‘beyond reasonable doubt’ prevents officers from being brought to book”. The change in the standard of proof was also seen to play a central role in superintendents’ thinking, prompting greater awareness of the decision-making process: “It allows for a more mature application of decision-making... [and] requires a greater element of judgement”. One superintendent also highlighted the significance of the change and the need to “change the mindset” of officers, given that the police were used to dealing with the criminal standard.

Those with more experience outlined how the standard of proof informed panel decisions. The ‘balance of probabilities’ tended not to be discussed as a separate issue, but was raised within broader debates on the evidence presented in the case. One superintendent, for example, said that he was particularly conscious of the change in assessing the quality of evidence. This is interesting in relation to the sliding scale of proof, given that most superintendents were unable to describe what it meant in practice. As there was no indication from the interviews that the decision-making process was affected by the seriousness of the case, it seems likely that the sliding scale affects the extent to which evidence is scrutinised by the tribunal panel.

- **Determining the sanction** – In general, deciding on an appropriate sanction was viewed as a relatively straightforward process. In most cases, it was clear that the panel would select a sanction which was proportionate to the seriousness of the incident. However, one

superintendent pointed out that it was often difficult for panels to reach agreement in drink-drive cases, because they tended to involve debates on whether the convicted officer should expect to lose their job.

Box 6: Views on other procedural changes

Unsatisfactory performance procedures

As mentioned in Chapter 2, the unsatisfactory performance procedures were introduced to enable problems of poor performance to be addressed outside the disciplinary process. However, C&D department staff reported that use of procedures had been limited and, as a result, were perceived to have had minimal impact. A small minority of those interviewed stated that poor performance issues were being dealt with through this, more effective, route and that had led to a reduction in the number of disciplinary cases.

Review and appeals process

Experience of the review and appeals process was limited. Although no specific problems had been experienced, there was a general concern that there were no disincentives for officers to appeal: "Sanctions can be brought down, but not increased... people could appeal for the sake of appealing as they've nothing to lose".

Summary and conclusions

This chapter has looked at the impact of the new misconduct procedures on the disciplinary process from the perspective of those working in C&D departments. In terms of what the procedural reforms were expected to achieve, the research has shown that there are wide-ranging views on whether the procedures are effective and efficient, and have helped reduce the barriers to disciplinary action. In particular, significant concerns were raised about the process of charging officers, which, to many, was seen to be more complicated. A few of those interviewed also questioned the impact of the standard of proof at different stages in the disciplinary process; thus, raising concerns about its implementation. To some extent, the problems identified in this chapter might help explain the limited wider impact of the new misconduct procedures. However, it should be noted that significant improvements to the disciplinary process were highlighted by C&D department staff, most notably the introduction of tribunal panels.

Key findings

- Overall, C&D department staff reported that the new misconduct procedures had not greatly affected investigations; the same level and types of evidence would be gathered.
- A small number of those interviewed raised concerns about use of the lower standard of proof during investigations. They questioned whether police practices had changed in line with the 'balance of probabilities' and, as a result, whether it had been implemented fully.
- It was clear that the process of charging officers with disciplinary offences had become more involved and detailed as a result of the new Code of Conduct. Allegations against an officer had to be fitted around the individual principles set out in the code.
- Views on the Code of Conduct were mixed. A significant proportion of those interviewed felt that it was more difficult to charge officers using the new Code of Conduct. In particular, they argued that the guiding principles were open to interpretation. There is also scope for cases to be handled inconsistently, or at least differently, particularly in the absence of a framework which illustrates the Code of Conduct and allows information on cases and C&D department work practices to be shared.

- Use of the fast-track procedures was limited in the sample forces. In general, C&D officers reported that this was because cases had not met the necessary criteria. Concerns were also raised about human rights and the potential impact of the procedures on ongoing criminal proceedings against accused officers.
- There was no prevailing view amongst C&D departments staff about how the 'balance of probabilities' had affected disciplinary hearings. Whereas a significant proportion reported that tribunal panels were using the 'balance of probabilities' on a sliding scale, a small number questioned whether the lower standard was being taken into account fully.
- Overall, the introduction of tribunal panels was seen to be a positive step. They were seen to be more effective and fairer. The inclusion of superintendents was also seen to bring grounded experience to decision-making, whilst encouraging leadership at a local level.
- Those with tribunal panel experience reported that the decision-making process was open and consensual, and that the standard of proof was considered in the scrutiny of evidence.

5. Impact on operational officers

As highlighted in Chapter 2, the new misconduct procedures were expected to secure police confidence in the disciplinary process and establish clear standards of conduct. It was also expected that the procedures would avoid having an adverse effect on police practice and officer morale. Both were identified, however, as possible negative consequences because of the potential for the reforms to increase the perceived risk of being disciplined. This chapter, therefore, examines the impact of the new misconduct procedures on the views and experiences of operational police officers.

The chapter begins by looking at officers' knowledge of the new misconduct procedures. Their views on, and confidence in, different aspects of the disciplinary process are then examined. The chapter continues by focusing on procedural definitions of misconduct and those developed by police officers. Finally, the chapter looks at the impact of the reforms on police practice and officer morale.

Knowledge and training

There was an overall awareness amongst operational officers that new procedures had been introduced, although knowledge of specific changes was limited: "I'm not 100 per cent with the new procedures". For example, a significant number of constables said they knew very little about the procedural changes: "I think it would be nice to know what is actually going to happen... under this system. I am not sure what goes on at all".

In most cases, any knowledge about the new misconduct procedures was limited to an awareness that the standard of proof had been lowered. Even then, there was confusion amongst a small number about what the change meant and whether it had taken effect:

It has gone from 'beyond reasonable doubt' to 'a reasonable assumption'.
(Sergeant – individual interview)

They were certainly intending to drop the standard of proof... they were trying to drop it down to burden of proof and probability... whether it is or not I wouldn't know.
(Sergeant – individual interview)

To some extent, officers' lack of knowledge might be linked to training, which was seen to be limited across the sample. Officers of all ranks said that both inspectors and sergeants were more likely to have received information compared to constables. For one inspector, this raised issues about how training was targeted:

As inspectors, we receive more information than constables, even though for... misconduct, it is more likely that the constables will be accused since they deal with the public more than we do in confrontational situations.
(Inspector – group interview)

However, there was no consensus amongst those interviewed on the need for further training. Constables who had recently joined the service said they would welcome more information on the types of behaviour which could lead to disciplinary action and what their rights were under the new procedures. More experienced constables, in comparison, felt that only those under investigation required additional training. One officer, however, strongly emphasised the need for officer training to help explain the disciplinary process and, because of their experience, was clearly angry about force priorities:

It is quite funny that when the force have got to bring in something new, like CS gas... they rush us through like wildfire to ensure we know how to use it... Yet, the one thing that we need when we're in the shit, they don't give us any training for. I've fallen foul and been subjected to [misconduct]... Basically, I found that the force... was a complete and utter blur. You haven't a clue what's coming or going.
(Constable – group interview)

Views on the disciplinary process

Aims of the new misconduct procedures

On the whole, the officers interviewed for the study viewed the new misconduct procedures in negative terms. There was a widespread perception that they were “a mandate for getting rid of people” rather than a tool for reducing misconduct. A small proportion of officers, for example, perceived the disciplinary process to be adversarial, focused primarily on “nailing” individuals:

The biggest problem we are stuck with in this country is... with everything being adversarial, it's not a search for the truth at all, it's the search for a scapegoat.

(Constable – group interview)

The overall impression I got [was] that anything I do out there it's my responsibility. The force was basically saying, 'Right, there you go, we have told you. It's up to you now. You're responsible for your own actions and don't come crying to us if things go wrong'.

(Constable – individual interview)

One constable felt that there was a “desperation to bring criminal charges” in police inquiries. He argued for the police to adopt a model which emphasised organisational learning, focused more on “what caused the problem and a way of avoiding that problem arising again”. This view points towards a more problem-solving approach for dealing with misconduct and one which has been developed in some forces (see Chapter 6). There was, however, a general recognition amongst those interviewed that there was a need to dismiss officers, and that this was easier under the new misconduct procedures.

Investigations

In general, operational officers were insecure about, and distrustful of, the investigation process: “With misconduct you are guilty until proven innocent”. This follows previous research which showed that disciplinary investigations were viewed with suspicion and were seen to be stressful (Maguire and Corbett, 1991; Uildriks and van Mistrigt, 1991). Amongst those interviewed for this study, concerns were raised about the:

- fairness and consistency of decisions;
- impact of civil actions on the way complaints were handled;
- emphasis placed on the complainant's account during an investigation;
- extent to which allegations seen, by officers, as “minor” or “malicious” are investigated;
- level of support provided to accused officers by forces and staff associations; and
- importance attached to previous allegations found to be unsubstantiated.

It should be noted, however, that a significant number of constables had confidence in the disciplinary process and that this was based, primarily, on the thoroughness of investigations. There was also a general perception that matters would rarely be formally investigated under the new misconduct procedures, and were more likely to be dealt with at a local level.

Box 7: An example of the perceived unfairness of investigations

One inspector reported that in order to “get rid” of an officer, senior managers “hit him with all these stupid little offences”. The allegations against the officer were described as minor incidents of “rule bending”. The officer was, for example, alleged to have used a police mobile phone to make private calls. Whilst the inspector acknowledged that this was likely to be a disciplinary offence, he said that it was common practice and that officers usually paid for their part of the bill. The inspector, as a result, felt that the allegations had been used as a way of moving the officer to another area.

The standard of proof

Amongst officers of all ranks there was an overriding perception that use of the ‘balance of probabilities’ at disciplinary hearings was unfair. It was seen as an additional challenge to an officer’s position, although some were not clear what the lower standard meant in practical terms: “‘Balance of probabilities’ can mean anything and it’s a whole different situation to have to prove a case beyond ‘all reasonable doubt’”. As a result, a significant proportion of operational officers felt vulnerable to the new misconduct procedures; they were concerned that malicious or unfounded complaints could lead to dismissal:

I don’t think that the ‘balance of probabilities’ is a good thing at all... your career is on the line, and that’s not good enough.

(Sergeant – individual interview)

Despite the prevailing viewpoint, a significant minority considered the change to be fair, particular if “you were a good and conscientious police officer”. For them, the lower standard of proof was positive; it enabled officers to be disciplined where there was evidence of unethical behaviour but without being overly restrictive:

Out in the criminal court there are people who will get away with it because it can’t be proved ‘beyond reasonable doubt’. Any reasonable person looking at it can see it is pretty obvious what they have done. I think if it is done on the ‘balance of probabilities’ then that is fair enough.

(Sergeant – individual interview)

Box 8: An example of the perceived impact of the standard of proof

One inspector described his experiences of being investigated for alleged dishonesty and neglect of duty. During the investigation, he was interviewed and statements were taken from the two people who made the allegations. However, the inspector was critical of the scope of the investigation, primarily because statements were not taken from witnesses referred to in his initial interview. The officer’s Federation representative was “appalled” and subsequently collected statements from 15 other officers. In the inspector’s view, the scope of the investigation was affected by the standard of proof. He felt that the investigating officers were not obliged to collect all the available evidence because they were working to the ‘balance of probabilities’.

Timescales and communication

The length of time taken to conclude cases and the perceived lack of communication during the process were key concerns for operational officers (see also Maguire and Corbett, 1991). Both problems were seen to be unaffected by the new misconduct procedures and were the cause of much resentment, particularly in cases considered to be minor:

It is a farce. We had somebody done on misconduct basically shagging on duty... and it took 14 months to interview him and they put him on restricted duties... At the end of 14 months it then took another three months to make a decision. He was still on restricted duties and then he got a bollocking and that was it.

(Sergeant – group interview)

The impression is it takes a long time... they keep officers waiting... I know one particular [officer], he was suspended for 12 months and the case against him wasn’t proved... And the result of it was he got fined £15 for not keeping his pocket book up to date!

(Constable – group interview)

Concerns about the length of time and the provision of information were also raised by officers with direct experience of the disciplinary process. One constable, for example, reported that he was

interviewed about a complaint four months after it had been originally recorded and that he did not feel fully informed about the progress of the investigation: "If we took that amount of time to deal with our clients, we'd be done for neglect of duty".

Officers' concept of misconduct

Chapter 2 looked at how misconduct had been defined and the role of legal rules in the regulation of police work. As noted earlier, previous research has shown that legal rules need to be internalised by officers in order to have leverage on police practice (Smith, 1986). It was also shown that the impact of legal rules was unlikely to be uniform and constant (Dixon, 1997). This prompts questions about what operational officers consider to be misconduct and the influence of the Code of Conduct.

Procedural definitions of misconduct: the Code of Conduct

In general, there was uncertainty amongst constables and sergeants about how misconduct was defined under the new misconduct procedures. A few officers felt that it was now broader in scope and emphasised policing style. In comparison, a significant proportion of those interviewed viewed the old Discipline Code as being much clearer and more specific. As a result, some officers were unsure about whether their conduct was unacceptable:

You can get in trouble for virtually anything now... everything is very sort of vague and open, so if they did want to discipline you for a particular offence, it could fit in somewhere.

(Sergeant – group interview)

Under the old system you could see quite clearly if you'd done something that you were going to get disciplined for, under this lot it's a bit airy-fairy.

(Constable – group interview)

Despite the general view that the Code of Conduct was open to interpretation, some constables argued that the broader values contained in the code were positive. Not only were they seen to be common-sense and related to police practice, they were also seen to provide officers with a context for explaining and justifying their actions. One constable pointed out that the flexibility of the Code of Conduct "is a good thing because it... allows you to put your case a bit more [fairly]". A small number of officers added that the change was not significant and that the new code was simply framed in different language (e.g. the principle of 'honesty and integrity' was seen to be implicit in the old Discipline Code).

Working definitions of misconduct

Given the apparent gap between the Code of Conduct and the need amongst some officers for a clear framework, operational officers of all ranks seemed to have developed their own working definitions of misconduct. These definitions, rather than being fixed and precise, tended to consist of examples of behaviour which they would consider to be unacceptable. For example:

- swearing;
- threatening behaviour;
- use of racist language;
- aggression; and
- use of unnecessary force.

Even though such behaviour is likely to be in breach of the Code of Conduct, personal work practices and policing styles were more important to some individual officers:

I am confident that I behave in an appropriate manner towards everybody. So I'd never feel that I'm... sailing a bit close to the wind that I'd better look up [the Code of Conduct] and make sure I'm not.

(Constable – individual interview)

If you deal with people how you would want to be dealt with... you are fair, you are polite, you are honest... then you shouldn't fall foul of [misconduct].

(Constable – individual interview)

There was also evidence to suggest that working definitions influenced the way supervisors handled problems of misconduct, particularly in the early stages of the disciplinary process. Sergeants, for example, reported that they used their own working rules (or those of their supervisor) to determine whether to informally resolve a public complaint.

In the context of previous studies on the legal regulation of policing (Smith, 1986), the findings indicate that the Code of Conduct has not had a major influence on officers' thinking about conduct. The uncertainties expressed by those interviewed would suggest that the principles set out in the Code of Conduct have not been internalised by many operational officers. It also points to an apparent gap between what can be realistically achieved by formal rules and police activity. However, it was clear that officers relied on their own practical ideas about misconduct and that these often resembled the Code of Conduct. This could mean that the code has had no practical impact, but that working rules have developed through experience to help officers 'keep out of trouble'. Alternatively, it could mean that the principles have been taken into account by officers and inform, at some level, their understanding of policing. It is interesting to note, for example, that officers' working definitions reflect aspects of the old Discipline Code which perhaps points to the potential for cultural and attitudinal changes in the longer-term.

The impact on police practice – managing risk

Overall, there was no evidence from the interviews with operational officers and superintendents to suggest that the new police misconduct procedures had affected the perceived risks associated with policing (e.g. in terms of receiving a complaint).

For both sergeants and constables, the procedural changes were not reported to have affected their decision-making or work practices. As one officer said, they would still take "every situation as it comes". Encounters with the public, for example, were felt to be unaffected by the reforms: "When you're dealing with situations, you just get in there and deal with the situation". In comparison to issues of personal safety, the new misconduct procedures were not in the forefront of officers' minds. Given the strength and consistency of views expressed by operational officers in the study, it seems unlikely that the changes to the disciplinary process have had much impact on officer practice, either positively or negatively.

There was evidence from the interviews that officers, particularly those with more experience, were acting with greater care whilst on duty and that this was a result of broader, longer-term factors. Two main changes in conduct were identified by operational officers: namely the use of language and encounters with the public (see below). Superintendents also highlighted specific factors affecting senior officers, such as the:

- increased need to undertake risk assessments (e.g. in the policing of football grounds);
- legality of operational decision-making under the Human Rights Act 1998; and
- use of employment tribunals (e.g. in relation to equal opportunity issues).

The use of language

Operational officers reported that they had become more careful about their use of language in front of colleagues and members of the public. This change was often described negatively, in terms of the need to "cover your back" and "watch every word":

Because people are very aware of what they can say or do in front of a woman. They are... very careful with regards to ethnicity, very careful now with regards to anything sexist [or] homophobic... A lot of people will say the banter has gone, it's not as much fun as it used to be.

(Sergeant – individual interview)

You've got to watch every comment that comes out of your mouth... In the past you might have been to a domestic and if like tempers are fraught and people are f'ing and blinding, then sometimes to calm things down you might have to shout... But these days it would be like, 'That's not the right thing to say'. Somebody could complain about the fact you use one swear word, so I wouldn't react in the same way now.

(Constable – group interview)

Encounters with the public

Officers described adopting a more cautious approach in police-public encounters, and in particular in their use of searches. Contact with the public tended to be seen to involve a high risk of receiving a complaint.⁶ This was linked to insecurity about being accused of racism and changes in public attitudes towards acceptable behaviour. Officers also reported developing strategies to help minimise the likelihood of receiving a complaint. Both sergeants and constables said they tended to respond to calls for service in pairs, particularly if the call involved someone known to complain on a regular basis.

Examples where the “fear of complaints” had adversely affected police practice were rare. One constable did describe a particular incident involving a violent struggle between two constables and three to four young people. Other police officers who arrived at the scene as back-up were said to have just “stood and watched”. When questioned by their colleagues, the back-up officers said that they did not get more involved because they did not want to receive a complaint.

Overall, the perceived growth in officers’ caution, or at least uncertainty, was not seen to have been prompted by the introduction of the new misconduct procedures. Some officers saw the change as a result of broad, longer-term factors: “I wouldn’t say [the risks] are any different myself over the last couple of years, but certainly over the last ten years, for different reasons”. Operational officers identified four factors, namely the:

- increased willingness for colleagues to complain and to challenge racist, and to a lesser extent sexist, comments;
- fear of integrity testing: “It’s got to the stage where even a lot of PCs are suspicious of other PCs”;
- negative public and media attitudes (e.g. the increased willingness to make complaints and the reporting of the Stephen Lawrence Inquiry): “The old respect is gone”; and
- the challenges prompted by new legislation and policing diversity.

The impact on officer morale

Chapter 2 highlighted that one of the possible negative consequences of implementing the new misconduct procedures was a decline in officer morale. However, there was no evidence from the interviews with operational officers to suggest that this had occurred in practice. Officers of all ranks reported that the changes to the disciplinary process had no direct impact on officer morale (although the fear of complaints was highlighted as a more general worry). Overall, levels of staff morale were linked more to other factors. Some of the inspectors and sergeants, for example, highlighted understaffing as a critical issue. The negative views of the public and the media were, again, seen to be an important influence. It should also be noted, however, that no one factor was singled out by officers; the effect on officer morale was seen to be cumulative.

Summary and conclusions

This chapter had looked at the impact of the new misconduct procedures on the perceptions and practices of operational officers. The research showed that the procedural changes have not prompted widespread confidence in the disciplinary process. Operational officers were often critical of the investigation process and viewed the lower standard of proof as a threat. It should be noted, however, that officer knowledge of the procedures was relatively poor. Also, because the outcome of

⁶ Maguire and Corbett (1991) showed that officers have a clear sense of high risk situations and that their activity during these situations is influenced by the desire to avoid complaints.

cases has not changed dramatically, it is possible that officers' perceptions are not based directly on experience and may change as the reforms 'bed-in' further.

The research also questioned the extent to which the Code of Conduct has provided officers with clear standards of behaviour; working definitions appeared to play a more influential role in officers' thinking about misconduct. On a more positive note, there was no evidence to suggest that police practice or officer morale had been adversely affected by the new misconduct procedures.

Key findings

- Overall, there was an awareness amongst officers that there had been changes to the disciplinary process. Knowledge of specific changes was very limited and tended to be restricted to an awareness that the standard of proof had been lowered. Officers' lack of knowledge might be linked to training, which was generally seen to be limited.
- In general, the new misconduct procedures were viewed negatively. There was a widespread perception that they were a means of dismissing officers, rather than a tool for reducing misconduct.
- It was clear that officers were distrustful of the investigation process, with specific concerns raised about the handling of some cases. A significant number of constables, however, were confident in the system because of the thoroughness of investigations.
- Amongst officers of all ranks there was an overriding perception that use of the 'balance of probabilities' at disciplinary hearings was unfair. A significant proportion of operational officers felt vulnerable to the new misconduct procedures.
- The length of time taken to conclude cases and the perceived lack of communication during the process were key concerns, causing much resentment amongst officers.
- In general, there was uncertainty about how misconduct was defined under the new misconduct procedures. However, officers of all ranks had developed their own working definitions of misconduct based on examples of unacceptable behaviour.
- There was no evidence to suggest that the reforms have affected operational policing practices; the procedures were not at the forefront of officers' minds. However, more experienced officers reported taking greater care with their use of language and in dealing with members of the public. The change in behaviour was linked more to broader factors.
- There was no evidence to suggest morale had been affected by the procedural changes. Overall, levels of staff morale were influenced more by other factors.

6. Towards an holistic approach: a brief discussion

It seems obvious to point out that, in many ways, the police disciplinary process is a 'condensed version' of the criminal justice system: incidents are reported to, and recorded by, the relevant authorities; they are investigated; evidence is judged in a formal hearing; and offenders are disciplined. In this context, the reform of police discipline has focused primarily on the later stages of the process, those which are comparable with the prosecution and sentencing stages of the criminal justice system. However, it is important to recognise that, with both police misconduct and criminal justice, efforts to improve effectiveness and efficiency have not rested solely on legal or procedural changes. For example, there have been important moves in policing, generally, towards a more targeted and proactive approach based on problem-solving and the use of intelligence. Similarly, a range of methods exist (or have been proposed) for reducing misconduct and promoting integrity.⁷ Moreover it should be noted that several forces have made progress in using such methods, and that they have been used alongside the disciplinary procedures which remain important as a final and necessary 'safeguard'. These can be seen, to some extent, as more holistic approaches towards the problem.

The development of a more holistic and integrated approach for dealing with misconduct finds support in the research literature. Punch (2000) argued that corruption and misconduct cannot be "banished by temporary, repressive measures", but require the use of a broad range of complementary interventions. He pointed out that whilst police discipline and inspection can play an important preventative role, their effectiveness is dependent on having strong local supervision and supportive police cultures. Punch, therefore, viewed police discipline as one intervention within a broader attack based around:

- tough measure – including, for example, leadership, proactive investigation, training, and the rotation of staff in high risk areas of policing; and
- fostering integrity – including, for example, developing organisational and group learning, and actively promoting ethics and integrity through education.

The use of police discipline alongside a broad range of measures, within an holistic approach, is an example of a longer-term and more strategic response to the problem of officer misconduct (see also Herzog, 2000). Given that an holistic approach is likely to change the way the problem of misconduct is perceived and addressed, how can the main elements of this model be characterised? Central to the holistic model are the principles of problem-solving and proactivity; these emphasise the need for the nature and underlying causes of misconduct to be analysed and for targeted interventions to address those problems. In contrast, a procedural approach would emphasise the need to respond to recorded incidents through the existing legalistic framework. The holistic model also focuses more on organisational learning in order to reduce misconduct, rather than on deterrence and on the individuals who have breached internal rules. The procedural and holistic models for addressing misconduct are outlined below in Table 6.

There was evidence from this study (supported by a small-scale telephone survey) that a number of forces had developed holistic approaches to deal with police misconduct, primarily aimed at a reduction in public complaints. These approaches tended to involve using complaints constructively to tackle underlying problems, rather than discouraging members of the public from complaining. One of the more promising examples is outlined below (Box 9).

Although the holistic model appears to be promising, further research is needed to understand whether such approaches are successful at reducing problems of officer conduct. It is also important that these approaches, particularly those focused on complaints reduction, have clear aims and are monitored. Previous research, for example, has shown that a reduction in complaints is not always positive because the absence of complaints can be an indication of a lack of public confidence in the system (Goldsmith, 1991).

⁷ Not to mention a range of methods which seek to monitor and improve police practice more generally (e.g. supervision, training, and recruitment processes).

Table 6: The procedural and holistic models

Narrow procedural model	Wider holistic model
<p><i>Legalistic framework</i></p> <ul style="list-style-type: none"> • draws on a series of legal rules • use of an adversarial, administrative process 	<p><i>Problem-solving framework</i></p> <ul style="list-style-type: none"> • draws on detailed analysis of the problem • development of central and local interventions
<p><i>Reactive</i></p> <ul style="list-style-type: none"> • responds to incidents reported by the public or from within the police service 	<p><i>Proactive</i></p> <ul style="list-style-type: none"> • identifies problems proactively (e.g. analysis of data and intelligence, and investigation)
<p><i>Individual focus</i></p> <ul style="list-style-type: none"> • focuses on individual/repeat incidents • imposes sanctions on individual officers • provides a direct means of redress and 'retrospective accountability' (see Brogden, Jefferson, and Walklate, 1988) • deterrence 	<p><i>Organisational focus</i></p> <ul style="list-style-type: none"> • focuses on wider causal factors • use of targeted interventions based on analysis • adopts an organisational response based on education • reduction and prevention (e.g. situational prevention (Neyroud and Beckley, 2001))

Box 9: Complaints reduction in Merseyside Police

Merseyside provided a promising example of an holistic approach for reducing police complaints. It had led to a significant reduction in the number of recorded complaints and was based on the following elements:

- **Central monitoring** – Monitoring statistics are routinely analysed to identify problems. (An officer interviewed for this study highlighted the need for linked data systems which can be analysed at individual and aggregate levels.)
- **Officer referral scheme** – Officers who receive three complaints in 12 months are flagged up for more detailed investigation. After an initial interview, action plans and training are usually undertaken: “It’s about training, not necessarily about being punitive”. It is important, however, that warning markers are routinely followed-up. In another force, the C&D department was unaware that officers were not being placed on a similar programme because the welfare department was short of staff.
- **Communication strategy** – Every six months, educational sessions are held to encourage and support operational officers. Key messages delivered in recent sessions included the cost of civil action and alcohol-related problems over the Christmas period (e.g. drink-driving and assaults). Other forces regularly publish newsletters and use the intranet to provide practical advice to officers on how to reduce the risk of receiving complaints.
- **Responsibility and leadership** – Investigating officers are given dedicated responsibility for misconduct in specific police divisions. This facilitates ownership and knowledge, and enables problems to be resolved locally. In some cases, problems are challenged by encouraging leadership (e.g. the introduction of new management if weak supervision is seen as a problem).
- **Accountability and performance management** – Divisional commanders are also held to account for local problems through the use of performance indicators. In one division, a problem was identified with the use of handcuffs. The divisional commander was subsequently held to account for improvements through monitoring and meetings with the dedicated investigating officer.

Note: Identified during RDS research on police corruption (Miller, 2003).

7. Conclusions and recommendations

Conclusions

The research has shown that, on balance, the impact of the new police misconduct procedures has been relatively limited. Looking at the wider picture, it is clear that the reforms have not greatly affected the key stages of the disciplinary process. The procedural changes have also not resulted in any significant changes in the way cases are handled by C&D departments or in operational police practice.

Looking first at intended outcomes, the new misconduct procedures (and the lower standard of proof in particular) were expected to improve the effectiveness of the disciplinary process. The research has shown, however, that the reforms have not directly led to any changes in the number of investigations or charges. Provisional evidence also suggested that there had not been a significant change in the number of hearings or the outcome of cases, although this may alter over time. This was also supported by the widespread perception amongst C&D department staff that the changes had little impact in practical terms.

The procedural reforms were also intended to improve the process of disciplining officers. In general, the view amongst C&D department staff was that the process had not changed dramatically; experience of using the new misconduct procedures was mixed. In some cases, concerns were highlighted about specific changes, most notably the use of the Code of Conduct in charging officers. Evidence suggested that there was scope under the Code of Conduct for cases to be handled inconsistently or, at the very least, differently particularly without a supporting framework. The introduction of written warnings and tribunal panels were both identified as improving the effectiveness of the disciplinary process. In addition, provisional evidence suggested that the time taken for cases to be concluded had gone down, although there were some doubts about whether this had been experienced at a local level.

The research has shown that the possible negative consequences of implementing the new misconduct procedures have not been experienced. Operational officers reported that their decision-making and morale have not been adversely affected by the reforms. However, the disciplinary process was viewed in negative terms and officers commented that they felt vulnerable as a result of the changes. It is likely that this is linked to a lack of knowledge and awareness amongst officers, particularly as the reforms have had limited impact on the disciplinary process. The research has also questioned the role of the Code of Conduct in regulating police practices; in some cases, officers relied on their own working definitions of misconduct rather than the formal rules and principles. Officers were unclear about how misconduct was defined under the Code of Conduct. Officers did report that they took greater care with their use of language and in police-public encounters, but that this was more a result of broader changes affecting the police service.

Issues were raised during the research about the process of putting the reforms into practice. Although implementation was not generally seen as a problem, the limited impact of the changes and the lack of officer knowledge suggest that the introduction of the reforms could have been improved. In particular, there may have been greater scope for officer training and for the Home Office to provide implementation support for the delivery of the reforms. The research has also indicated that the use of police discipline alongside other interventions, in a more holistic approach, may be more effective at reducing problems of officer misconduct.

Recommendations

Recommendations, which attempt to build on the existing disciplinary process, have been directed specifically towards the Home Office and police forces.

Home Office

- The Home Office, in consultation, should continue to clarify the parts of the guidance with which forces have experienced practical difficulties. Problems highlighted during the research include *sub judice*, the rules of disclosure, and the admissibility of evidence.
- In clarifying the guidance, consideration should also be given to the Code of Conduct. It is important for the code to take into account fully the needs of C&D departments and operational officers in order to ensure that it is applied appropriately and influences police practice. It may be possible, for example, to use examples to illustrate, and build upon, the existing principles. The development of 'operating guidelines' to support the Code of Conduct may also have greater relevance to officers in operational settings (e.g. 'proportionality' under the Human Rights Act 1998).
- The fast-track procedures, because of their limited use, should be reviewed to examine whether they are effective and practical. The review should also look at ways of improving the practicality of using the procedures.
- The Home Office and police service should extend the current mechanisms for communication. Formal and informal links may encourage best practice and details of cases to be shared, and help ensure forces' approaches under the procedures are broadly consistent. For example, it may enable the implications of the Human Rights Act 1998 for the procedures to be communicated effectively. The mechanisms could include a secure internet site for C&D departments, routine bulletins, and practitioner meetings.
- The Home Office, supported by HMIC, should monitor the use and impact of the new misconduct procedures on an ongoing basis. They should also examine the disciplinary process to identify good practice and ways of improving its efficiency and effectiveness within the current procedural framework.
- It is important that with future reforms (e.g. the Independent Police Complaints Commission), the Home Office is sensitive to the needs of forces and partner agencies, and provides extensive implementation support to assist the delivery of reforms.

Police forces

- C&D departments should use disciplinary procedures within a broader, holistic approach for dealing with misconduct. These need to be based on analysis and problem-solving and build upon those already developed by forces and previous research. It is important that approaches are monitored and evaluated as to their effectiveness.
- C&D departments should ensure that problems of poor performance are not processed under the new misconduct procedures. Performance issues need to be addressed by the appropriate department through the unsatisfactory performance procedures; the implementation and use of the procedures should also be monitored.
- It is important that checks exist in the disciplinary process to help ensure that decisions during the investigation and hearing stages are in line with the new misconduct procedures (i.e. the 'balance of probabilities').
- The use of written warnings at a local level should be monitored by C&D departments. Support should be provided routinely to divisional commanders to help ensure they are used consistently and appropriately.
- It is critical that operational officers are aware of the standards of conduct expected of them. C&D departments, in conjunction with force training departments, should develop targeted communication strategies to educate officers, ensuring that ethical standards are meaningful in an operational context and that officers are aware of how to minimise the risks of misconduct.

- Active supervision at a local level should be encouraged by C&D departments. Previous research points to supervision as an important means of identifying, monitoring and challenging problems (Punch, 2000). In addition, existing mechanisms for reporting misconduct should be strengthened.
- To help secure confidence in the disciplinary process, forces need to:
 - identify and minimise delays (e.g. through auditing and by making agreements with partner agencies about timescales or file requirements);
 - demonstrate openness and fairness where possible;
 - communicate routinely and regularly with complainants and officers to keep them informed about the progress of their cases; and
 - examine, with local staff associations, the welfare services provided to officers.

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Appendix A

Discipline Code

1. **Discreditable conduct**, which offence is committed where a member of a police force acts in a disorderly manner or any manner prejudicial to discipline or reasonably likely to bring discredit on the reputation of the force or of the police service.
2. **Misconduct towards a member of a police force**, which offence is committed where:
 - a. the conduct of a member of a police force towards another such member is oppressive or abusive; or
 - b. a member of a police force assaults another such member.
3. **Disobedience to orders**, which offence is committed where a member of a police force, without good and sufficient cause:
 - a. disobeys or neglects to carry out any lawful order, written or otherwise;
 - b. fails to comply with any requirement of a code of practice for the time being in force under section 60 or 66 of the Act of 1984; or
 - c. contravenes any provision of the Police Regulations containing restrictions on the private lives of members of police forces, or requiring him to notify the chief officer of police that he, or a relation included in his family, has a business interest within the meaning of those Regulations.
4. **Neglect of duty**, which offence is committed where a member of a police force, without good and sufficient cause:
 - a. neglects or omits to attend to or carry out with due promptitude and diligence anything which it is his duty as a member of a police force to attend to or carry out; or
 - b. fails to work his beat in accordance with orders, or leaves the place of duty to which he has been ordered, or having left his place of duty for an authorised purpose fails to return thereto without undue delay; or
 - c. is absent without leave from, or is late for, any duty; or
 - d. fails properly to account for, or to make a prompt and true return of, any money or property received by him in the course of his duty.
5. **Falsehood or prevarication**, which offence is committed where a member of a police force:
 - a. knowingly or through neglect makes any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for police purposes; or
 - b. either wilfully and without proper authority or through lack of due care destroys or mutilates any record or document made, kept or required for police purposes; or
 - c. without good and sufficient cause alters or erases or adds to any entry in such a record or document; or
 - d. has knowingly or through neglect made any false, misleading or inaccurate statement in connection with his appointment to the police force.
6. **Improper disclosure of information**, which offence is committed where a member of a police force:
 - a. without proper authority communicates to any person, any information which he has in his possession as a member of a police force; or
 - b. makes any anonymous communication to any police authority, or any member of a police force; or
 - c. without proper authority, makes representations to the police authority or the council of any county or district comprised in the police area with regard to any matter concerning the force; or

d. canvasses any member of that authority or of such a council with regard to any such matter.

For the process of this paragraph the Isles of Scilly shall be treated as if they were a county.

7. **Corrupt or improper practice**, which offence is committed where a member of a police force:
- a. in his capacity as a member of the force and without the consent of the chief officer of police or the police authority, directly or indirectly solicits or accepts any gratuity, present or subscription; or
 - b. places himself under a pecuniary obligation to any person in such a manner as might affect his properly carrying out his duties as a member of the force; or
 - c. improperly uses, or attempts so to use, his position as a member of the force for his private advantage; or
 - d. in his capacity as a member of the force and without the consent of the chief officer of police, writes, signs or gives a testimonial of character or other recommendation with the object of obtaining employment for any person or of supporting an application for the grant of a licence of any kind.
8. **Abuse of authority**, which offence is committed where a member of a police force treats any person with whom he may be brought into contact in the execution of his duty in an oppressive manner and, without prejudice to the foregoing, in particular where he:
- a. without good and sufficient cause conducts a search, or requires a person to submit to any test or procedure, or makes an arrest; or
 - b. uses any unnecessary violence towards any prisoner or any other person with whom he may be brought into contact in the execution of his duty, or improperly threatens any such person with violence; or his duty, or improperly threatens any such person with violence; or
 - c. is abusive or uncivil to any member of the public.
9. **Racially discriminatory behaviour**, which offence is committed (without prejudice to the commission of any other offence) where a member of a police force:
- a. while on duty, on the grounds of another person's colour, race, nationality or ethnic or national origins, acts towards that other person in any such way as is mentioned in paragraph 8 (abuse of authority); or
 - b. in any other way, on any of those grounds, treats improperly a person with whom he may be brought into contact while on duty.
10. **Neglect of health**, which offence is committed where a member of a police force, without good and sufficient cause, neglects to carry out any instructions of a medical officer appointed by the police authority or, while absent from duty on account of sickness, commits any act or adopts any conduct calculated to retard his return to duty.
11. **Improper dress or untidiness**, which offence is committed where without good and sufficient cause a member of a police force while on duty, or while off duty but wearing uniform in a public place, is improperly dressed or is untidy in his appearance.
12. **Damage to police property**, which offence is committed where a member of a police force:
- a. wilfully or through lack of due care causes any waste, loss or damage to any police property; or
 - b. fails to report as soon as is reasonably practicable any loss of or damage to any such property issued to, or used by him, or entrusted to his care.
13. **Drunkenness**, which offence is committed where a member of a police force renders himself unfit through drink for duties which he is or will be required to perform or which he may reasonably foresee having to perform.
14. **Drinking on duty or soliciting drink**, which offence is committed where a member of a police force, while on duty:

- a. without proper authority, drinks, or receives from any other person, any intoxicating liquor; or
- b. demands, or endeavours to persuade any other person to give him, or to purchase or obtain for him, any intoxicating liquor.

15. **Entering licensed premises**, which offence is committed where a member of a police force:

- a. while on duty; or
- b. while off duty but wearing uniform, without good and sufficient cause, enters any premises in respect of which a licence or permit has been granted in pursuance of the law relating to liquor licensing or betting and gaming or regulating places of entertainment.

16. **Criminal conduct**, which offence is committed where a member of a police force has been found guilty by a court of law of a criminal offence.

17. **Being an accessory to a disciplinary offence**, which offence is committed where a member of a police force incites, connives at or is knowingly an accessory to any offence against discipline.

Appendix B

Code of Conduct for Police Officers

- a. The primary duties of those who hold the office of constable are the protection of life and property, the preservation of the Queen's peace, and the prevention and detection of criminal offences. To fulfil these duties police officers are granted extraordinary powers; the public and the police service therefore have the right to expect the highest standards of conduct from them.
 - b. This Code sets out the principles which guide police officers' conduct. It does not seek to restrict officers' discretion; rather, it aims to define the parameters of conduct within which that discretion should be exercised. However, it is important to note that any breach of the principles in this Code may result in action being taken by the organisation, which, in serious cases, could involve dismissal.
 - c. This Code applies to the conduct of police officers in all ranks whilst on duty, or whilst off duty if the conduct is serious enough to indicate that an officer is not fit to be a police officer. It will be applied in a reasonable and objective manner. Due regard will be paid to the degree of negligence or deliberate fault and to the nature and circumstances of an officer's conduct. Where off duty conduct is in question, this will be measured against the generally accepted standards of the day.
1. **Honesty and Integrity.** It is of paramount importance that the public has faith in the honesty and integrity of police officers. Officers should therefore be open and truthful in their dealings; avoid being improperly beholden to any person or institution; and discharge their duties with integrity.
 2. **Fairness and Impartiality.** Police Officers have a particular responsibility to act with fairness and impartiality in all their dealings with the public and their colleagues.
 3. **Politeness and Tolerance.** Officers should treat members of the public and colleagues with courtesy and respect, avoiding abusive or deriding attitudes or behaviour. In particular, officers must avoid; favouritism of an individual or group; all forms of harassment, victimisation or unreasonable discrimination; and overbearing conduct to a colleague, particularly to one junior in rank or service.
 4. **Use of Force and Abuse of Authority.** Officers must never knowingly use more force than is reasonable, nor should they abuse their authority.
 5. **Performance of Duties.** Officers should be conscientious and diligent in the performance of their duties. Officers should attend work promptly when rostered for duty. If absent through sickness or injury, they should avoid activities likely to retard their return to duty.
 6. **Lawful Orders.** The police service is a disciplined body. Unless there is good and sufficient cause to do otherwise, officers must obey all lawful orders and abide by the provisions of Police Regulations. Officers should support their colleagues in the execution of their lawful duties, and oppose any improper behaviour, reporting it where appropriate.
 7. **Confidentiality.** Information which comes into the possession of the police should be treated as confidential. It should not be used for personal benefit and nor should it be divulged to other parties except in the proper course of police duty. Similarly, officers should respect, as confidential, information about force policy and operations unless authorised to disclose it in the course of their duties.
 8. **Criminal Offences.** Officers must report any proceedings for a criminal offence taken against them. Conviction of a criminal offence may of itself result in further action being taken.
 9. **Property.** Officers must exercise reasonable care to prevent loss or damage to property (excluding their own personal property but including police property).

10. **Sobriety.** Whilst on duty⁸ officers must be sober.⁹ Officers should not consume alcohol when on duty unless specifically authorised to do so or it becomes necessary for the proper discharge of police duty.
11. **Appearance.** Unless on duties which dictate otherwise, officers should always be well turned out, clean and tidy whilst on duty in uniform or in plain clothes.
12. **General Conduct.** Whether on or off duty, police officers should not behave in a way which is likely to bring discredit upon the police service.

⁸ For superintendents, 'on duty' includes any period when the officer is off duty but has agreed to be available for recall to duty to deal with matters which might occur within the area(s) he/she has agreed to cover. It does not apply to the general 24 hour responsibility superintendents have for their own command area/department.

⁹ An officer who is unexpectedly called out for duty should be able, at no risk of discredit, to say that he or she has had too much to drink.

Appendix C

Overview of the new misconduct procedures and the procedural changes

1. Initial action

The way an allegation of misconduct is initially handled will be dependent on the source of the allegation:

- **Internal sources** – Problems identified internally (e.g. by line-managers or colleagues) are expected to be dealt with at a local level by an officer's supervisor. They can be referred to the C&D department for investigation if not successfully resolved or if potentially serious or criminal misconduct is involved.
- **External sources** – Complaints received from members of the public are initially handled under separate police complaints procedures. At this stage, recorded complaints are either informally resolved or referred to the C&D department. The C&D department can conduct a limited or full investigation, or submit an application to the PCA for dispensation from the need to investigate.

Depending on the outcome of any preliminary enquiries, officers may be sanctioned by words of advice or a written warning. Warnings can only be issued where the failure to meet standards has been admitted and are only valid for 12 months.

The procedural changes

The new misconduct procedures rationalised the sanctions available to deal with misconduct at the early stages of the disciplinary process. Under the old discipline procedures, an officer was able to receive a broader range of sanctions (e.g. words of advice, reprimand or divisional admonishment).

2. Formal investigation

Investigations are usually carried out by the C&D department using standard investigative methods (e.g. interviews, statements and forensic evidence). The appointed investigating officer is legally required to serve, as soon as practicable, a notice to inform the officer under investigation about the allegations. In some cases, the officer may be suspended from duty or placed on restricted duties pending the outcome of the case. Cases from public complaints can be referred to the PCA on a mandatory or voluntary basis; the PCA can appoint the investigating officer and/or supervise the investigation. It should also be noted that where criminal offences are suspected, investigations are subject to the Police and Criminal Evidence Act 1984.

The procedural changes

The new misconduct procedures did not include any procedural changes directly related to this stage in the disciplinary process.

3. The investigation report

At the end of an investigation, a report will be submitted saying whether, on the available evidence, the allegations against an officer are substantiated. On that basis, the head of department and deputy chief constable will decide whether:

- the Code of Conduct has been breached; and
- disciplinary action is required (i.e. words of advice, a written warning, or a formal hearing).

The report may also be referred to the CPS and/or PCA to consider any criminal allegations and to agree any disciplinary action.

The procedural changes

As mentioned above, implementation of the new misconduct procedures resulted in the existing Discipline Code being replaced by a new Code of Conduct. The approaches adopted by the two codes are significantly different:

- The Discipline Code set out a series of individual disciplinary offences (see Appendix A). An officer would, therefore, be subject to discipline “if he commits an offence set out in the discipline code” (The Police (Discipline) Regulations 1995). Each section of the code contained a broad offence classification (e.g. ‘discreditable conduct’, ‘neglect of duty’, and ‘abuse of authority’) followed by a more detailed description of the types of activities included.*
- In contrast, the new Code of Conduct is based on a series of principles which aim to provide a guide to officer conduct (Appendix B). As the Code of Conduct is framed in positive terms, an officer would be subject to disciplinary action if their conduct fell below the standards set out in the code. Each section of the code is based on an overarching principle (e.g. ‘honesty and integrity’, ‘politeness and tolerance’ and ‘performance of duties’) followed by further details of what is expected of officers.*

4. Misconduct hearing

Before a hearing, the officer under investigation will be charged with an offence; they will be notified about the sections of the Code of Conduct which they are alleged to have breached.

At the misconduct hearing, the case will be heard by a tribunal panel composed of a presiding officer and two assessors (usually an assistant chief constable and two superintendents). The panel will determine the facts of the case and whether an officer has breached the Code of Conduct. The accused officer can be represented at the hearing (and other stages of the disciplinary process) by a member from their staff association and/or, in some circumstances, a legal representative.

The decisions of the panel are based on the ‘balance of probabilities’, although the level of proof is expected to increase with the seriousness of the case. If charges are proved, the panel can impose the following sanctions:

- dismissal;
- requirement to resign;
- reduction in rank;
- fine;
- reprimand; or
- caution.¹⁰

The procedural changes

There are two main differences between the old discipline procedures and the new misconduct procedures at this stage of the process, namely:

- the standard of proof used; and*
- the presiding authority at the disciplinary hearing.*

The introduction of the new misconduct procedures resulted in the lowering of the standard of proof at disciplinary hearing. Under the old discipline procedures, cases were decided upon using the criminal standard of proof (i.e. ‘beyond reasonable doubt’). The standard of proof was reduced under the new

¹⁰ The outcome will be removed from an officer’s record after three or five years depending on the punishment

misconduct procedures to the lower, civil standard (i.e. the 'balance of probabilities'). This also meant that it was now possible for officers acquitted in a criminal court to face a disciplinary hearing for cases based on the same facts (effectively abolishing the double jeopardy rule).

Previously, under the old discipline procedures, the chief constable (or their deputy) acted at the presiding authority at disciplinary hearings. The presiding officer was replaced by a tribunal panel with implementation of the new misconduct procedures.

It should also be noted that as a result of the reforms:

- *the sanctions available to the tribunal were rationalised (to exclude reduction in pay); and*
- *it became possible to hold a hearing in the absence of the accused officer.*

5. The appeals process

An officer can request their chief constable to review a panel's decision in order "to rectify clear errors or inconsistencies in process or determination" (Home Office, 1999). If a severe sanction has been imposed but the decision is upheld in review, an officer also has the right to appeal to a Police Appeals Tribunal. Tribunals, appointed by the local police authority, have the power to overturn previous decisions and impose less severe sanctions.

The procedural changes

The new appeals process is more devolved than the process set out in the old discipline procedures. Under the old arrangements, the Home Secretary acted as a centralised appellate authority.

The fast-track procedures

Disciplinary action can be fast-tracked in advance of any criminal proceedings if "an officer has been caught 'red-handed' committing a serious crime" (Home Office, 1999). Fast-tracked cases are required to have overwhelming evidence of serious, criminal offences which are likely to lead to imprisonment and dismissal from the force.

The procedural changes

The fast-track procedures were new provisions under the misconduct procedures.

The unsatisfactory performance procedures

Alongside the new misconduct procedures, a framework was introduced to deal with persistent under-performance in an objective and systematic way. The unsatisfactory performance procedures were also intended to enable issues of poor performance to be addressed outside the disciplinary process. They contain a series of stages which provide opportunities for assessing the nature of the problem, improving performance through remedial action, and, in some cases removing officers from the service.

The procedural changes

The unsatisfactory performance procedures were new provisions introduced in parallel with the new misconduct procedures. The force personnel (or equivalent) department was given responsibility for their implementation.

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