
Disproportionality in Misconduct Cases in the Metropolitan Police Service

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M O P A C

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Executive Summary	3
1. Introduction	4
Aim and objectives	4
2. Method and results	5
Review of the existing evidence	5
In-depth analysis of five years’ worth of MPS misconduct data	6
Interviews with key staff involved in the assessment and investigation of misconduct.....	10
3. Discussion	15
Conclusions	15
Areas for further exploration	15
References	17

Executive Summary

Evidence & Insight, set within the Mayor's Office for Policing And Crime (MOPAC), were approached by the Metropolitan Police Service (MPS) to undertake research into misconduct cases. The main objectives were to determine the extent to which ethnic disproportionality featured within MPS Officer misconduct data. The research incorporated a review of the key literature, analysis of misconduct allegations made against MPS officers between 2010 and 2015, and 11 in-depth interviews with key staff involved in the assessment and investigation of misconduct in the MPS.

Key Findings:

- The research found a number of studies that evidenced the existence of ethnic disproportionality in disciplinary proceedings in other police forces - both in the UK and US - as well as other professions.
- BAME officers in the MPS are twice as likely as White officers to be subject to misconduct allegations.
- Allegations against BAME police officers are more likely to be substantiated, whilst allegations against White officers are more likely to be unsubstantiated.
- This disproportionality is not driven by length of service; age of officer; differences in allegation type between BAME and White officers; or differences in on vs off duty behaviour.
- Whilst there was no ethnic disproportionality in the write off method for substantiated cases, in unsubstantiated cases BAME officers were more likely than White officers to still receive management action.
- There is no disproportionality gap in the number of public complaints made against BAME and White officers.
- Those interviewed for the research were confident current processes were fair and robust, putting forward the point that they only dealt with cases they were given and were not focussing on ethnicity – indeed in most cases would not know the ethnicity of the officer the allegation was against.
- Interviewees expressed concerns over an overall reluctance to deal informally with problematic staff behaviour or performance issues.
- Whilst research to date has been able to evidence the existence of disproportionality, no studies have so far been able to put forward conclusive evidence as to its causes or 'what works' in responding to it.
- In terms of potential causes, there are three prominent academic theories: 1) Fear of being accused of racism; 2) Conscious / unconscious bias; and 3) Failure to deal with difference. With the research to date and the data available it is impossible to say for certain to what extent - if at all - any of these theories are applicable to the MPS.
- It is recommended that the MPS turn their focus to the development of possible interventions - either specific to the misconduct process or to staff more widely. This may include specific training, enhanced information provision, promoting more informal solutions through behavioural 'nudges', changes to process, or approaches that encourage and support de-escalation and informal resolution.

1. Introduction

The overarching aim of this research was to explore the apparent disproportionality in misconduct cases in the Metropolitan Police Service (MPS) that sees Black, Asian and Minority Ethnic (BAME) officers more likely to go through this process. The learning and insights gained from the research will be important in driving understanding into the potential barriers and enablers to fair processes in the MPS for all officers.

The overall objectives for the research were to:

- Provide a comprehensive review into the disproportionality issue seen within misconduct data available from the MPS, and to ensure clear findings are derived from one agreed data source (provided by the MPS);
- Identify whether particular types of misconduct, or other factors, are driving disproportionality;
- Understand better current misconduct processes in the MPS and explore whether there are any aspects of them that may contribute to disproportionality;
- Further explore possible reasons for the disproportionality and to suggest possible responses / interventions.

2. Methodology and Results

The research encompassed three elements: A) A review of the existing evidence in this field to garner the learning in the wider literature; B) An in-depth analysis of five years' worth of MPS misconduct data (2010 – 2015); C) A series of interviews with key staff involved in the assessment and investigation of misconduct in the MPS.

A) Review of the existing evidence

The literature review explored the extent to which disproportionality is unique to the MPS, reasons for disproportionality and possible interventions. This section presents key findings:

Disproportionality in misconduct is not unique to the MPS. A number of studies have evidenced similar patterns in other police forces in the UK (e.g. Greater Manchester Police, West Midlands Police and the British Transport Police; Hagger, Johnson, Smith and Robert, 2013), as well as the US (Lersch and Mieczowski, 2000; Rojewk and Decker, 2009).

Disproportionality is also not unique to policing. Research has found that BAME staff in the NHS are twice as likely to be disciplined compared to white staff (Archibong and Darr, 2010), whilst BAME barristers were not only overrepresented in the number of internal complaints raised against them, but also more likely to have external complaints against them upheld (Bar Standards Board, September 2013).

A number of studies place the issue of disproportionality in misconduct within a wider context of the experiences of BAME officers in the police, with some suggesting that despite years of reform, overt racism, as well as covert racism are still common in areas such as recruitment, promotion, and in daily encounters with other officers (EHRC, 2009; House of Commons Report, 2016). Other studies have argued that a resilient dominant white police occupational culture still makes it difficult for BAME officers to fit in (e.g. O'Neill and Holdaway, 2007; House of Commons report, 2016).

The existing research suggests that in this respect the experiences of BAME officers in the police are consistent with those of BAME staff in other professions. This includes the prison service (Prison Reform Trust, 2006), Higher Education (Equality Challenge Unit, 2011) and the NHS (NHS Workforce Race Equality Standard, 2016).

Academic perceptions of the reasons for disproportionality in internal misconduct proceedings are divided, with three main theories currently being put forward:

1. Some studies suggest that disproportionality results from a fear of being accused of racism, leading to managers and supervisors to shy away from trying to find informal solutions. This in turn either deprives BAME officers of valuable learning and the opportunity to rectify behaviour, or leads to managers taking refuge in more formal procedures (Morris, 2004; Matravers, Motto and Tseloni, 2006; Smith et al, 2012).

2. Other studies argue that disproportionality must be understood in terms of implicit bias. However, whilst there are indeed numerous studies evidencing the existence of bias, for example police intervening disproportionately with black people (EHRC, 2016) or an association of black people with crime and violence (e.g. Correll et al, 2007), it must be noted that no quantitative research has been found which examined whether conscious or unconscious bias could explain the disproportionality in misconduct.
3. Lastly, a failure of forces to understand and deal with difference has been identified as an explanation for the disproportionality in misconduct. An independent review concluded that the police 'appear to have problems managing difference in their workforce, and that the sorts of issues that managers believe can be settled by an informal conversation with white officers often end up in full blown disciplinary proceedings against officers from BAME backgrounds' (Chapman, 2014, p.28).

The literature review was unable to identify any research on 'what works' in responding to disproportionality - illustrative of the fact that whilst a number of studies have been able to evidence the existence of disproportionality, none have so far been able to put forward conclusive evidence as to its causes or alter it for the better.

Nevertheless, a number of strategies have been suggested to address disproportionality and diversity issues more broadly. This includes increasing BAME staff within the police, particularly in senior ranks, and within professional standards departments (evidence provided by the Black Police Association, cited in House of Commons report, 2016); improving diversity training (O'Neill and Holdaway, 2007); introducing coaching and mentoring for BAME officers; having more external assessors from BAME background on selection panels; establishing a BAME senior leaders' forum to provide guidance to BAME officers seeking promotions; and encouraging managers to resolve conduct issues with BAME officers informally.

B) In-depth analysis of five years' worth of MPS misconduct data

Analysis of five years' worth of MPS misconduct data (2010-2015)¹ was undertaken. In this time, a total of 4,777 officers received a misconduct allegation, of which 3,710 pertained to White and 1,028 to BAME officers². This means that whilst BAME officers make up 14% of the MPS workforce, they accounted for 21.5% of those subjected to a misconduct allegation.

Over the five years, there was an increase of 48% in the number of officers subject to allegations of gross misconduct³. The number of officers subject to allegations of misconduct⁴ reduced by 11% during the same five-year period (see Figure 1).

¹ Please note that the analysis focused on internal conduct matter pertaining to officers only

² Please note that the ethnicity of 39 officers on the misconduct database was either unknown or missing.

³ Gross misconduct is defined as a breach of the standards of professional behaviour so serious that dismissal could be justified.

⁴ Misconduct is a breach of the standards of professional standards within the conduct regulations.

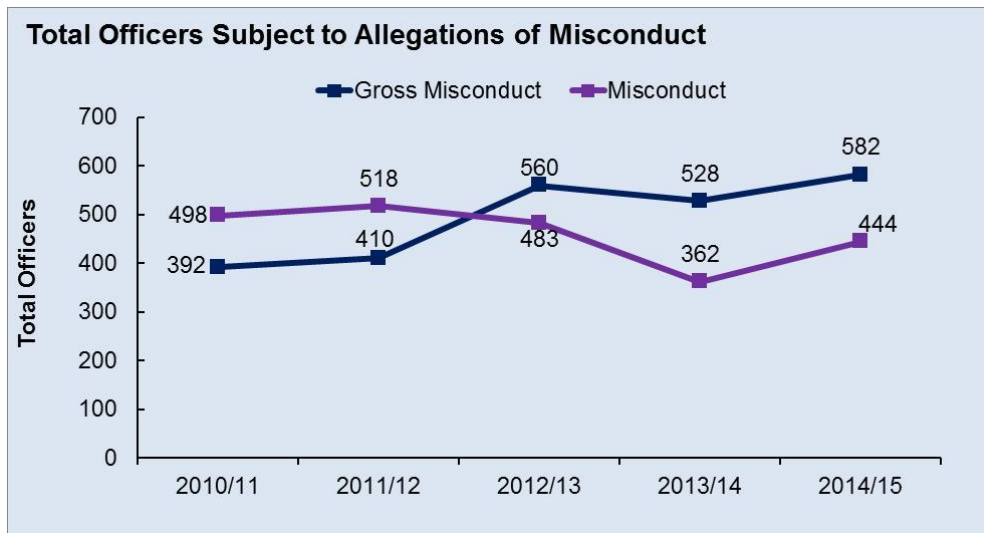


Figure 1. Numbers of officers subject to allegations of misconduct each year from 2010 to 2015

The analysis confirmed two key findings around disproportionality:

- i. BAME⁵ officers are twice as likely as White officers to be subject to misconduct allegations (see Figure 2). Over the five-year period from 2010 to 2015 there was an average rate of 4.96 per 100 for BAME officers, versus a rate of 2.46 for non-BAME officers.

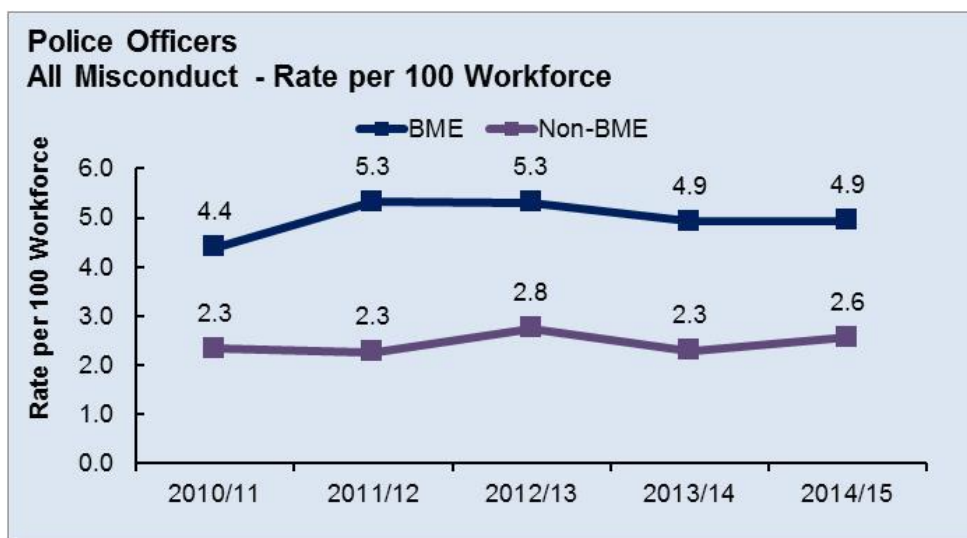


Figure 2. Rate per 100 MPS officers of receiving an allegation of misconduct or gross misconduct

- ii. Police officers from a BAME background are more likely to have a misconduct allegation substantiated, as compared to officers from a White background (48% vs 39%). White officers are more likely to have an allegation against them unsubstantiated (see Figure 3). This difference is statistically significant.

⁵ Ethnicity categories within the data set provided referred to White, Black, Asian, Other and Unknown. For the purposes of the analysis, BAME officer was defined as Black, Asian or Other.

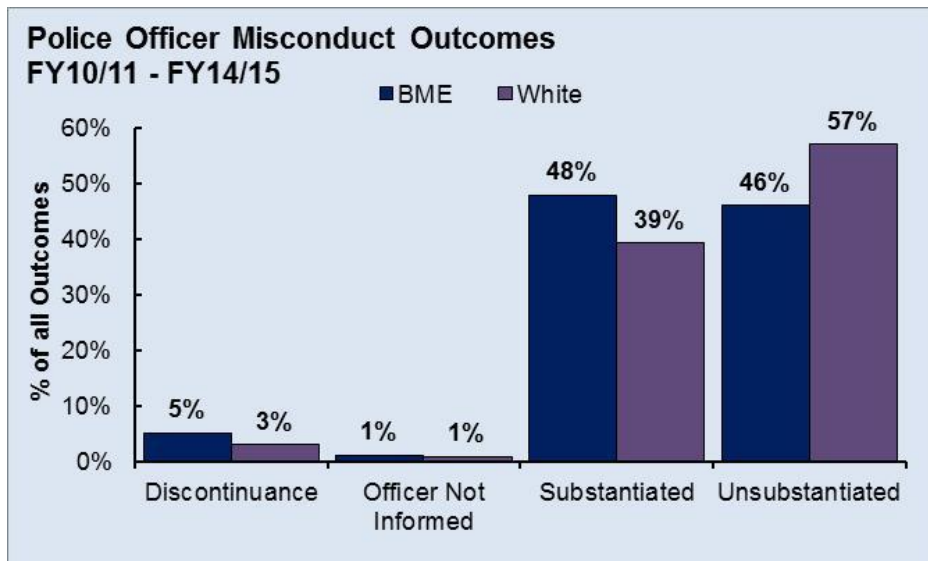


Figure 3. Outcomes of police officer misconduct allegations in the MPS

iii. This disproportionality is not found for Metropolitan Special Constabulary (MSC) officers (see Figure 4) – where the opposite pattern is observed and White officers are more likely to have a misconduct allegation substantiated (43% vs 38%). This difference is not statistically significant.

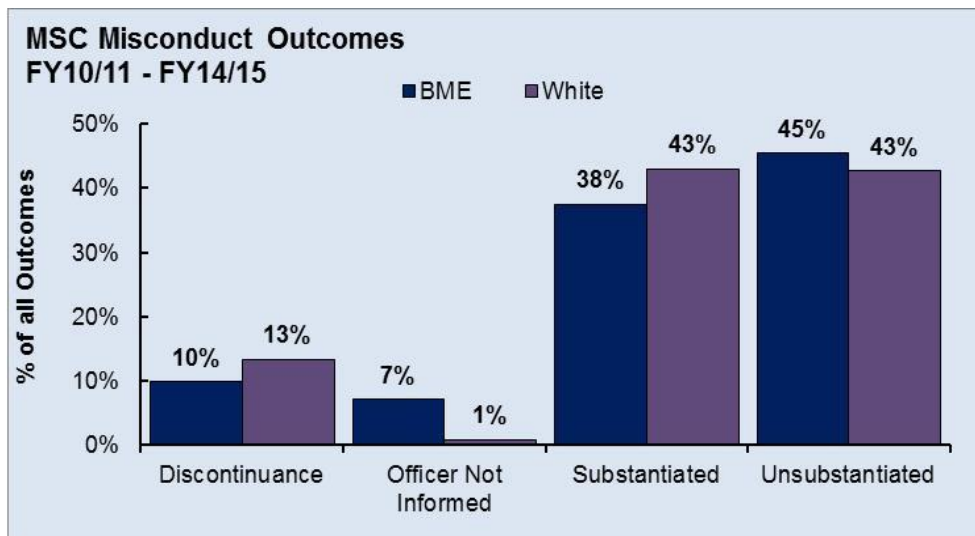


Figure 4. Outcomes of misconduct allegations against officers of the Metropolitan Special Constabulary

No causal links could be identified and the data was not able to explain the disproportionality gap. Nonetheless, the analysis was able to reject a number of hypotheses:

- A higher rate of misconduct allegations against BAME officers is *not* associated with length of service or age of officer. BAME officers with less than 10 years' service are still more likely to be subject to a discipline action than non-BAME officers with the same service length.

- The disproportionality gap is *not* driven by differences in allegation types between White and BAME officers. The gap is replicated across all different allegation types for officers (see Figure 5). Per 100 officers, BAME police officers are twice as likely as non-BAME officers to be subject to misconduct allegations – this ratio is similar across allegation type (ranging from 2.2:1 for Failures in Duty to 1.8:1 for Oppressive Behaviour).

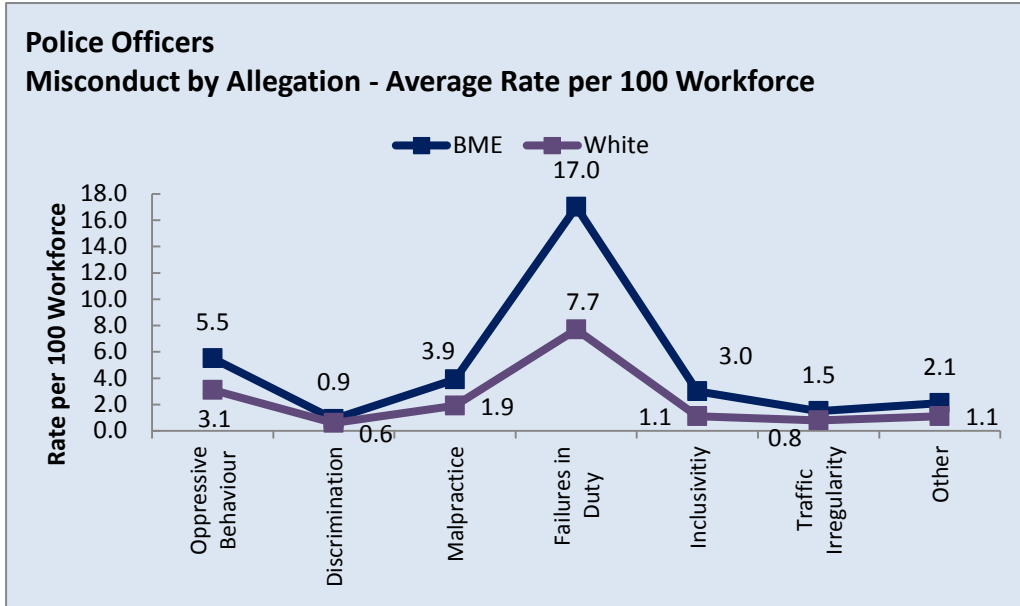


Figure 5. Average rate per 100 officers of misconduct allegation by allegation type

- Disproportionality is *not* driven by a difference in on vs. off duty behaviour between BAME/White officers. BAME officers are more likely than White officers to be subject to misconduct allegations irrespective of whether the behaviour was on or off duty (see Figure 6).

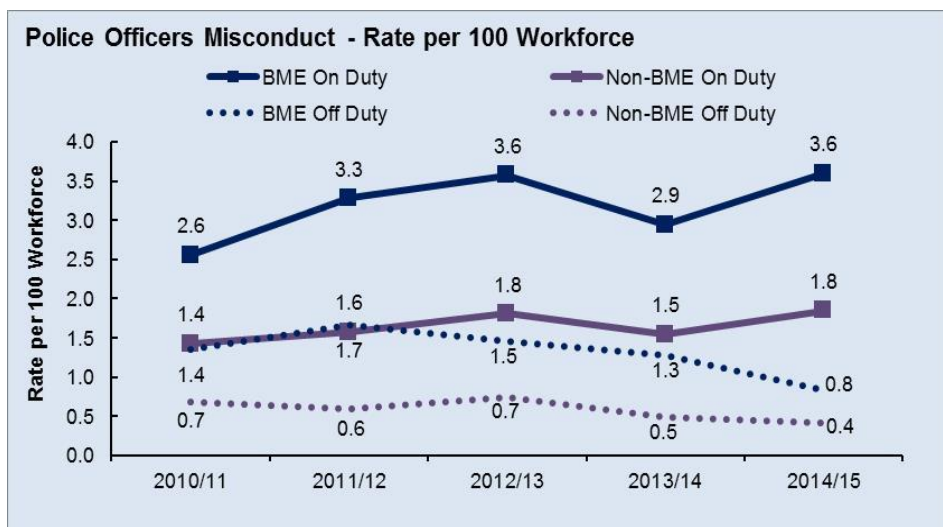


Figure 6. Rate per 100 MPS officers of receiving a misconduct allegation whilst on duty vs off duty

- The MPS misconduct data alone is not able to evidence whether BAME officers are more likely to be engaged in behaviour which leads to misconduct allegations. However, there is no disproportionality in the number of public complaints made against BAME vs.

White officers. BAME officers account for just 14% of the workforce and 15% of all public complaints.

- The disproportionality in misconduct outcome is not associated with a higher rate of BAME officers resigning/retiring. The disproportionality exists even when resigning/retiring officers are removed from the data (see figure 7).

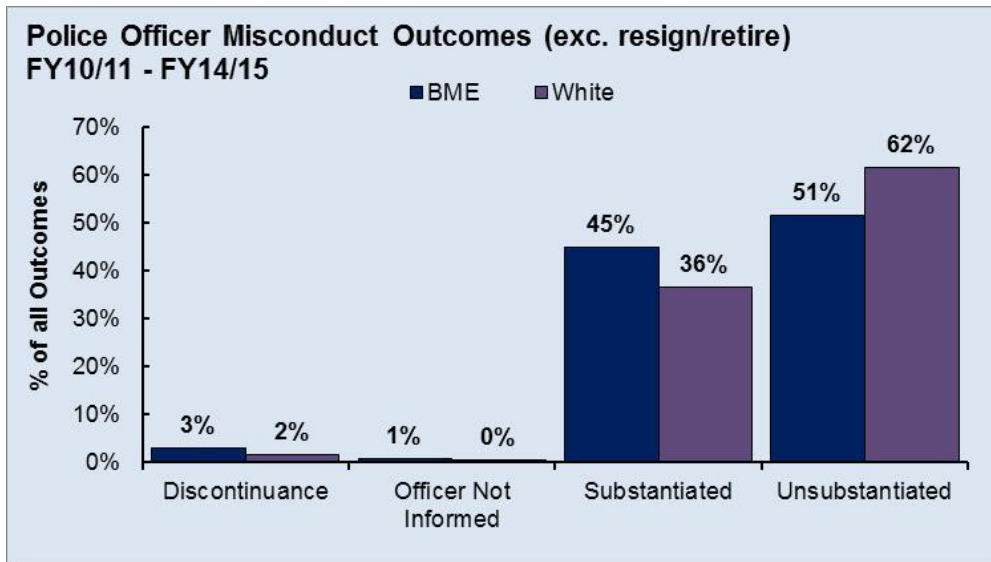


Figure 7. Outcomes of police officer misconduct allegations in the MPS, with those in which officers retire or resign before the process is completed removed from the dataset.

- BAME officers do not have a greater chance of receiving a more severe misconduct outcome than White officers. For those misconduct allegations that are substantiated, there is little difference between BAME and White police officers in the write off method (see Figure 8). However, BAME officers are more likely than White officers to receive management action in unsubstantiated cases (see Figure 9).

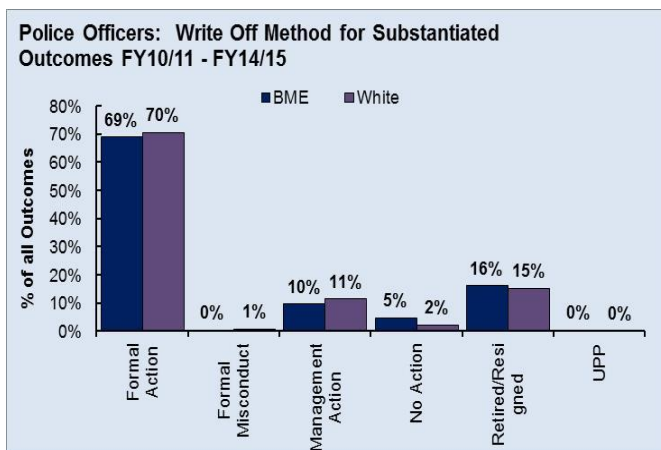


Figure 8. Write off method for police officer misconduct allegations in the MPS that were substantiated

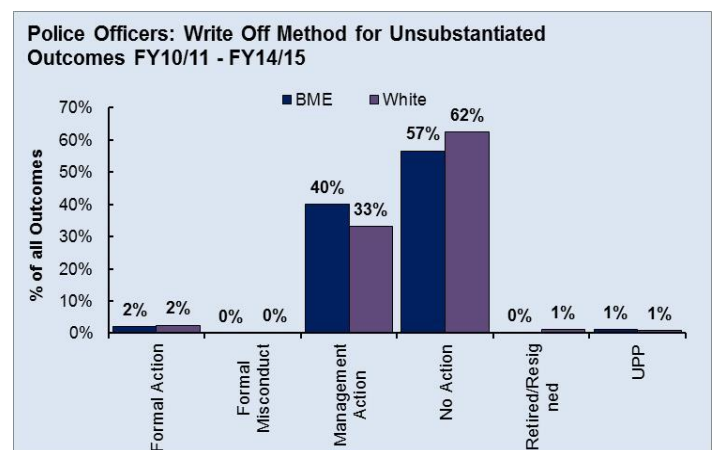


Figure 9. Write off method for police officer misconduct allegations in the MPS that were unsubstantiated

C) Interviews with key staff involved in the assessment and investigation of misconduct

A total of 11 semi-structured one-to-one interviews with key staff were carried out. This included Professional Standards Champions (PSCs), as well as representatives of centrally based Directorate of Professional Standards' teams⁶.

Interviews focused on four areas:

- Understanding better the decision-making that takes place at different stages of the misconduct process in the MPS;
- Exploring the processes in place to assess and investigate misconduct in the MPS, and the extent to which they may contribute to disproportionality;
- Understanding what happens with alleged misconduct before it enters a formal process; and
- Gathering the feedback and opinions of those directly involved in assessing and investigating misconduct on the findings of the data analysis.

Analysis of the interviews identified five key themes:

Perception of roles

Many of those interviewed had not necessarily sought out their roles, especially on borough. Nevertheless, all talked about the importance of representing the MPS and being motivated by a strong belief in upholding standards.

'We empower our staff. They are heavily supervised but when they walk out of that front door they are on their own and they are representing everybody... I have 50 officers on a response team and they go out every morning and evening and how they behave is very important.'

(Professional Standards Champion)

PSCs in particular took a pragmatic approach, seeing their roles as simply coming with the territory. At the same time, they felt - especially when compared with some of the other responsibilities they were holding on their boroughs - that the professional standards aspect was not always seen as a priority by others.

'No one really gets on my case about complaints. They get on my case about crime...'

(Professional Standards Champion)

⁶ The Complaints Support Team, Serious Misconduct Investigation Unit and the Hearings Unit

Prevention

A strong theme emerging from the interviews was a focus on early intervention and prevention and on wanting to be pro-active.

'There is a real focus on being preventative, and supporting officers to do the right thing and therefore preventing complaints... we always want to take time out to do preventative work.'

(Professional Standards Champion)

In this respect – there was almost unanimously positive feedback on the Taylor reforms⁷, which were perceived as having shifted focus from 'nailing someone' to early intervention and identifying learning.

'early admission and saying sorry probably means we can deal with it at a fairly low level; the ethos around Taylor is not about turning everything into a drama and nailing someone.'

(Professional Standards Champion)

However, the ability to be pro-active was often dependent on resourcing and staffing levels, with feedback from the boroughs in particular that current levels make it difficult for them to focus on a pro-active preventative approach. In places where they had been able to, feedback was overwhelmingly positive, with reports of an overall reduction in misconduct cases.

Good practice arising from being able to focus on prevention included:

- The Complaints Intervention Scheme;
- Borough-level professional standards strategies in place;
- Analysis of local misconduct data to identify themes and patterns; and
- Training and ongoing development - focused in particular on new joiners and newly promoted officers - around standards of behaviour, what constitutes misconduct and types of issues that are current themes in misconduct allegations.

A key challenge to prevention and early intervention was seen to come from a culture of reluctance to use informal solutions. Many of those interviewed felt that supervisors often either didn't have the time, or did not feel comfortable to give informal feedback to their staff. As a result, behaviour was either allowed to escalate, or supervisors defaulted to formal misconduct procedures. PSCs especially talked about conducting initial assessments on a lot of cases they felt could have been dealt with informally (or could have before it escalated).

⁷ The Taylor reforms refers to legislation passed on 1 December 2008 , which introduced new police misconduct and performance procedures throughout the Police Service in England and Wales. The legislation introduced new professional standards, the reintroduction of Unsatisfactory Performance Procedures (UPP) and new procedures for dealing with misconduct in the police service. It also moved the emphasis of the police discipline framework from punishment to professional development, learning and improvement.

'...stuff that comes to us shouldn't come to us,... if supervisors were strong enough, then it would not need to come to us.'

(DPS Officer)

Decision-Making

Most of those interviewed had not received any formal training for their roles, instead describing it as learning/training on the job. Whilst some expressed the wish for more comprehensive initial, as well as ongoing, training, most felt that the 'on the job' approach and support from colleagues had fully equipped them for the role. When assessing potential misconduct they referred to the Assessment of Conduct 'pyramid', as well as using common sense.

'Because some of the judgement is would I have behaved in this way...'

(Professional Standards Champion)

Some acknowledged the potential for subjectivity in this, but, nevertheless, all perceived there to be good levels of consensus and consistency in decision-making and the conclusions they came to when assessing a case. Indeed, there were plenty of 'control points' along the process, ensuring decision-making did not rest solely with one person. This quality control chain included going back and forth between local professional standards units and central DPS teams.

'Most of the time it is easy to make an assessment, it only gets complicated when an individual racks up the complaints, but usually the DPS agree with my decision, I only had them disagree once.'

(Professional Standards Champion)

MPS Misconduct Processes

There was mostly positive feedback on the processes in place for handling misconduct in the MPS – some of those interviewed described them as somewhat clunky and high in paperwork, but overall it was felt that current processes ensured the fairest assessment and robust processes.

Amongst those interviewed there was also consensus that these processes were applied consistently and that there were no differences in the way cases of officers and Specials were handled, nor between on and off duty cases.

Investigations were approached like any other investigations the police conduct – they were seen as absolutely thorough, although interviewees also stressed the importance of evidence gathering to remain proportionate. When asked about factors impacting on the length of an investigation, two key issues were mentioned: firstly - the work load of the investigating officer and secondly - the complexity of the investigation. In cases where the IPCC became involved

this was acknowledged as necessary, but often caused major frustrations because these cases were seen to often suffer from delays and interference.

'The interference by the IPCC will always be a big bugbear. This is length of time, but also general interference. We can find no case to answer and they can direct a hearing, and I think... can you imagine being an officer accused of gross misconduct and you find out we investigated and found no case to answer, but then... '

(DPS Officer)

Making sense of disproportionality

Interviewees were consistent in their reactions to the findings of the data analysis: whilst they accepted the results, they felt it did not reflect their lived experiences. All insisted that they did not act with any bias, nor thought that the MPS as a whole did.

'Nope, I really cannot explain that finding. It's not consistent with my work.'

(DPS Officer)

Interviewees pointed out that they were not the ones that initiated the misconduct process and therefore had no influence over which officers received allegations. This suggests that the disproportionality may come from earlier in the chain, although this does not answer the question of why there is a difference in the number of allegations substantiated between BAME and White officers.

Furthermore, in assessing misconduct, focus was felt to be on the circumstances of each case, rather than the person. Indeed, both those from central teams and PSCs on borough insisted that they would not necessarily know the officers involved.

'Cases are dealt with on their merit. I don't necessarily know the ethnicity of the officer...'

(DPS Officer)

In talking about possible causes for disproportionality, interviewees could only speculate. Nevertheless, most commonly talked about was a fear of being accused of racism, which interviewees felt led to supervisors in particular being less comfortable and therefore less likely to resolve issues informally. This increased the likelihood of misconduct allegation in two ways: firstly - a desire to do things 'by the book', increasing the likelihood of starting formal procedures; and secondly - behaviour being allowed to escalate until misconduct occurs.

'People in general are quite worried about being accused of being racist, to the point that they will bend over backwards to avoid being seen as racist. People are frightened of doing the wrong thing so maybe it is people putting things down on paper just to make sure.'

(DPS Officer)

4. Discussion

In summary, whilst there is strong and consistent evidence for the existence of disproportionality in misconduct, we remain unclear as to its causes and, therefore, possible interventions.

In terms of causes, there are three academic theories to be considered:

1. Fear of being accused of racism;
2. Conscious / unconscious bias; and
3. Failure to deal with difference.

With the research to date and the data available it is impossible to say for certain to what extent - if at all - any of these theories are applicable to the MPS. However, what is clear is that the findings from the MPS are entirely consistent with those of other police forces and other professions. Considering the wider disproportionality observed in the UK (such as increased representation of BAME populations among those stopped and searched, those in custody, or among the prison population), this suggests that if answers do exist, they lay both within the police service but also beyond it.

Amongst those interviewed for the research, concerns over an overall reluctance to deal informally with problematic behaviour or performance issues emerged as a theme. This - in line with the 'fear of being accused of racism' theory - may be further exacerbated for BAME officers. Identifying ways to empower investigators and supervisors to explore more informal solutions may lead to a reduction in formalised misconduct cases, including those pertaining to BAME officers.

The analysis and research conducted so far is unable to evidence to what extent conscious or unconscious bias might play a role in the disproportionality found within the MPS misconduct data. Those interviewed put forward the point that they only dealt with what they were given - and it is difficult to know, and indeed to research - what may have happened before cases entered a formal process. Some options for exploring this aspect (and wider issues) further may include:

- An in-depth series of case-reviews of comparable fact cases;
- Further analysis of public complaints data to see whether disproportionality appears later in the process (as has been found in the study pertaining to barristers; Bar Standards Board, 2013);
- Further analysis into the process, such as rank of original complainant or workload/ratio of cases for the investigators;
- Further analysis of misconduct data with a specific focus on unsubstantiated cases and any ethnic disproportionality in the receipt of subsequent management action.

- Experimental approaches exploring possible conscious or unconscious bias through a series of scenario-based decision-making exercises.

The 'failure to deal with difference' theory would suggest that the disproportionality we see in the misconduct data is a symptom of much wider issues – in terms of how White and BAME officers relate to one another – suggesting that we need to look for solutions more widely too. Training will have a crucial role here, and it may be worth examining to which extent current diversity (and other) training addresses issues around 'difference', particularly in the context of acknowledging traditional police culture.

In addition to any further research that could be conducted to aid our understanding around disproportionality in misconduct, it is recommended that the MPS turn their focus to the development and design of possible interventions to counter the issue. Such interventions may be either specific to the misconduct process or to staff more widely.

It is recommended that this includes specific training – focused upon investigators of misconduct, or supervisors around dealing with unsatisfactory behaviour and encouraging early resolution, or indeed more generic training around diversity and dealing with difference. Other options may be found around enhanced information provision, behavioural 'nudges', changes to process, or approaches that encourage and support de-escalation and informal resolution. Any intervention trialled, if designed and implemented well can in turn be subject to an evaluation to strengthen the evidence base.

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