

Equality and Human Rights Commission

Section 20

investigation

into the

Metropolitan

Police Service

Executive Summary

Foreword by Lead Commissioner – Laura Carstensen

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

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

The Howard Employment Tribunal (ET) remedy judgment in September 2014¹ raised significant concerns about how the Metropolitan Police Service (the MPS) treats their staff and officers when they make a complaint about discrimination, including under the MPS internal grievance procedure known as the Fairness at Work (FAW) procedure. This judgment recommended that there should be an independent review of the MPS's FAW procedures.

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

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

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

¹ *Howard v The Commissioner of the Police of the Metropolis*, 1 September 2014.

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

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

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

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

Executive summary

Background

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

Scope

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

Methodology

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

Regulatory framework

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

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

How the MPS handled complaints of discrimination

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

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

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

Victimisation

Victimisation was a feature in the ET findings about Ms Howard's and Daniel Lichter's³ claims of discrimination. We looked at specific cases where individuals had told us they felt they had been unlawfully victimised because they had raised a complaint involving claims of discrimination. On the basis of the evidence available to us in relation to the cases we assessed it was not possible to conclude that these particular individuals were being unlawfully victimised. This is because the evidence we received did not enable us to establish a causal link between the protected acts and subsequent detriments experienced by the individuals concerned.

Expectation of victimisation

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

Confidence in handling difference and diversity

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

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

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

The MPS as a learning organisation

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

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

What has happened since the investigation timeframe?

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

Findings

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

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

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

Recommendations

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

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

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

through the implementation of its FAWDC action plan and tackle issues regarding the perceived risk of victimisation.

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

Contacts

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