

# Follow-up review on police handling of allegations of discrimination

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July 2017

# Contents

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|                   |    |
|-------------------|----|
| Acknowledgments   | 3  |
| Foreword          | 4  |
| Introduction      | 5  |
| Executive summary | 6  |
| Methodology       | 8  |
| Findings          | 10 |
| Conclusions       | 25 |
| Recommendations   | 26 |

# Acknowledgments

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We would like to extend our thanks to the professional standards staff at Greater Manchester Police, West Yorkshire Police and West Midlands Police for co-operating with our review and continuing to learn from our findings.

We would also like to thank our IPCC colleagues for their work and comments on drafts of this project report.

# Foreword

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In 2014, we reviewed a sample of discrimination complaints from three large metropolitan forces: Greater Manchester, West Yorkshire and West Midlands. This revealed some weaknesses in how those complaints were dealt with. Since then, we have issued separate and detailed guidance on how to deal with discrimination complaints. We have now conducted a follow-up review, over a year after we issued the new guidance.

This review found that some things have improved. In our sample, where discrimination was raised as an internal conduct matter in the force, it was tackled much more effectively than before, with nearly two-thirds of allegations being upheld. However, the picture was less positive in relation to complaints from the public. Communication with complainants had improved noticeably, but the quality of investigations and reports was still unsatisfactory in two-thirds of the cases we examined.

This included not properly assessing the seriousness of the allegation, failing to provide auditable accounts from officers, and not

asking probing questions or using comparator evidence where relevant. It remained the case, as in the last review, that no discrimination allegations from the public were upheld by the forces concerned.

Our appeals work shows that these issues are not confined to the three forces reviewed. In 2016, we found that nearly half of local police investigations into discrimination allegations were flawed, a significantly higher proportion than other appeals that come to us.

We recognise that the three forces involved have experienced significant change, and that there is an appetite to improve. We hope that our guidelines will assist with this. We have recommended specific action that all forces in England and Wales can take to strengthen their own investigations in an area that is particularly important for public and community confidence.

A handwritten signature in black ink that reads "Anne Owers". The signature is written in a cursive, flowing style.

Dame Anne Owers  
Chair

# Introduction

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1. In June 2014, the IPCC published [Police Handling of Allegations of Discrimination](#) that considered how three large forces (Greater Manchester Police, West Midlands Police and West Yorkshire Police) investigated complaints about discrimination. This followed similar work with the Metropolitan Police Service (MPS) the previous year, which revealed some weaknesses in complaints handling. These weaknesses were particularly significant when dealing with discrimination allegations.
2. As well as making a number of recommendations for police forces, the review led to a commitment from us

that we would launch new guidelines for handling complaints about discrimination. We published the [IPCC Guidelines for Handling Allegations of Discrimination](#) in September 2015, along with a [summary version](#). This followed engagement and consultation with a range of stakeholders with an interest in discrimination.

3. In December 2016, we carried out a follow-up review to assess whether any progress had been made in the way that police forces deal with complaints of discrimination against their officers and staff. This report presents our findings.

# Executive summary

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1. Since our original report in June 2014, and the launch of the revised discrimination guidelines in September 2015, there have been some improvements to the way forces apply our discrimination guidelines to their investigations, but these do not go far enough.
2. It is positive to see that the approach taken to engagement with complainants has improved. While not increasing, the quality of interaction appears to have improved. We found many examples of forces actively engaging with complainants at an early stage to develop a better understanding of their complaint.
3. Investigations that arise from internal allegations rather than from a complaint by a member of the public (conduct investigations)<sup>1</sup> are more robust than we saw in our previous review. Although there were not many internal investigations into allegations of discrimination, almost all appeared thorough and the outcomes were appropriate to the conduct.
4. In the cases sampled, no investigations into complaints from members of the public had been upheld, and improvements in investigation methods and report writing are still needed. The cases we sampled showed that our guidelines could be applied more effectively in all investigations, at each stage of the complaint process.
5. The quality and presentation of final reports and letters were not adequate and often did not address the discrimination element of the complaint. We also found flaws in a number of investigations. Asking probing questions is an essential part of the investigative process when investigating any allegation and is particularly important in discrimination investigations. However, this is still not happening in a majority of the cases we looked at and therefore these investigations do not sufficiently explore the reasons behind an incident or action.
6. Similarly, when assessing a complaint, forces should compare people's experiences overall to see whether there are differences in the way groups with, for example, a certain protected characteristic have been treated. We found very little evidence of this happening in practice.

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<sup>1</sup> Subject to some limited exceptions, a conduct matter is any matter about which there is not or has not been a complaint, where there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings. (Section 12, *Police Reform Act 2002*.)

7. There is still an over-reliance on local resolution<sup>2</sup>, which is not always suitable for handling discrimination complaints. The quality of local resolution remains a concern and we have identified the areas where improvements are required.
8. We found a lack of auditable records for officers' accounts of what had taken place. They were often not in the case file, or, where verbal accounts had been taken, written records were not made.
9. The majority of complaints are now handled in professional standards departments (PSDs) and this allows for greater consistency and monitoring. However, further quality assessment of investigation reports and letters to complainants is required to ensure that there is adequate explanation for why something happened, and to ensure discrimination allegations have been addressed.
10. Complainants can appeal to us under certain circumstances if they are dissatisfied with the police investigation into their complaint. We are still upholding 47 per cent of appeals about discrimination (40 of 86), significantly more than those we uphold about other matters (36 per cent). We are also more likely to recommend forces to reinvestigate (in 61 per cent of upheld appeals). These figures corroborate the findings of this review, which identifies that there are still improvements to be made to the way in which discrimination complaints are investigated.
11. It is important that forces refer to our discrimination guidelines, which provide information, guidance and examples of good practice. Officers who are investigating allegations of discrimination should use the guidelines to inform their terms of reference and lines of enquiry.

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<sup>2</sup> A complaint can be locally resolved if the Appropriate Authority is satisfied that the conduct complained of would not justify bringing criminal or disciplinary proceedings against the person complained about and would not involve the infringement of a person's rights under Article 2 or 3 of the European Convention of Human Rights. (Paragraph 6, Schedule 3, *Police Reform Act 2002*.)

# Methodology

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**12.** This review assessed the effectiveness of our revised guidelines for investigating allegations of discriminatory behaviour. It also looked at how well the guidance has been embedded into the complaints handling practice.

**13.** We visited the same three forces as in our previous review – Greater Manchester Police, West Midlands Police and West Yorkshire Police. This allowed us to make direct comparisons with data collected in the 2014 review. The cases we examined were those completed since the start of 2016. We limited the review to this 11-month period to allow time for the revised guidelines, and advice provided in our September and October 2015 launch events, to embed. This meant that we examined a limited number of cases. Nevertheless, the cases we looked at were sufficient to:

- allow us to examine what improvements had been made since the last review
- identify any good practice
- assess what further work may need to be done

**14.** During our visits to the three forces considered in our review, we met with investigators from PSDs. We asked them 15 questions about:

- what they thought of our revised guidelines

- how the revised guidelines were used in their force
- what they felt had changed/improved since our last review

We also asked what training officers investigating allegations of discriminatory behaviour had received, and what work they were doing with communities and stakeholder groups to improve:

- training
- complaint handling
- access to the complaints system

## Data collection

**15.** We sampled closed public complaint files and internal conduct complaint files which included allegations of discrimination. We recorded qualitative and quantitative data from the files. Overall, we sampled 88 files:

- 11 internal conduct complaint files (where the matter was raised internally or by a member of the public who did not want to make a formal complaint)
- 77 complaint files (where a member of the public made a formal complaint).

## Sample definitions and sizes

| Complaints that included allegations of discrimination: sample definitions and sizes |   |    |
|--|---|----|
| Conduct  | Conduct only  | 11 |
| Complaints   | Complaints only   | 77 |
| Local resolutions  | Locally resolved complaints   | 26 |
| Progressed cases   | Locally resolved or investigated cases. Excludes complaints that were withdrawn/subject to regulation 17/23 or 'disapplied' <sup>3</sup>                        | 66 |
| Progressed complaints  | Locally resolved or investigated complaints. Excludes conduct investigations and those complaints that were withdrawn/subject to regulation 17/23 or disapplied | 55 |
| Total files sampled  |   | 88 |

- 16.** When assessing severity assessments<sup>4</sup> we examined all 88 cases.
- 17.** When looking at protected characteristics, or accounts taken from officers, we examined complaint and conduct matters together – 66 cases (excluding any complaints that were withdrawn or disapplied).
- 18.** This report sets out how the three forces we visited are now dealing with discrimination complaints compared to what we saw in our previous review. We have looked at direct comparisons for
- each stage of the complaint handling process. This included:
- assessing the early stage decision-making process
  - assessments of seriousness (including formal severity assessments)
  - the quality of local resolutions and investigations
  - examining whether sufficient rationale was provided to explain decision making
  - communicating the outcome of the complaint investigation

<sup>3</sup> There are certain limited circumstances in which a recorded complaint does not have to be dealt with under the *Police Reform Act 2002*. This is called disapplication and means that an appropriate authority may disapply the requirements of Schedule 3 of the *Police Reform Act 2002* in relation to a complaint.

<sup>4</sup> When the force decides a matter might result in criminal or misconduct proceedings, it must complete a severity assessment. This is the formal decision about whether the allegations, if proven, would amount to misconduct or gross misconduct.

# Findings

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## Demographic information

19. Our last review identified that forces were not recording complainants' protected characteristics accurately. This meant that differences in the treatment of groups with protected characteristics could not be explored. In only 45 per cent of sampled cases (76 of 170) for that review, was protected characteristic information recorded. In the remaining cases it was either missing or not known.
20. After the last review, we invited forces to share their action plans to implement the guidelines. Analysis shows that changes have been made to ensure this information is being captured in more cases. During this review, the sample of cases we looked at was much smaller, but the protected characteristics of the complainant was recorded in 68 per cent (60 of 88) of all cases. This is an improvement, but we would hope to see this information recorded consistently. Investigating officers cannot otherwise properly explore differences in treatment and are not therefore applying our guidelines.

## Meaningful contact with complainants

21. During our previous review, we found that police officers dealing with a complaint contacted the complainant in 82 per cent of cases. However, complaint handlers were failing to gain a real understanding of the complaint with considered questioning and engagement.

During this most recent review, we identified that although the percentage of complainants being contacted was only 75 per cent (58 of 77), there was a significant improvement in how investigating officers engaged with complainants and initiated meaningful contact at the start of an investigation. At all three forces visited we found evidence of a commitment to understanding the complainants' issues and concerns.

22. Good examples of contact with complainants included:
  - continuous engagement throughout the investigative and local resolution process
  - meeting in person with an interpreter to ensure that language barriers did not affect engagement
  - hand-delivering outcome letters to give the complainant an opportunity to ask questions

These practices could be adopted more widely because they:

- demonstrate a real intention to understand the complaint
  - examine why the complainant believed they had been discriminated against
  - maintain an effective dialogue throughout the complaints process
23. In 19 of the 77 complaints we sampled, the investigating officer met the complainant in person. For the most part, investigating officers discussed complaints over the phone. Our

review found that this was because complainants preferred this method of contact.

**24.** There is a greater chance of instilling public confidence if forces engage directly with the complainant and commit to gaining a real understanding of the complaint from the outset, and when engagement with the complainant is open and informative.

## Quality of complaint investigations

**25.** Our file sampling identified that 31 per cent (17 of 55) of completed complaint investigations and local resolutions were of a good standard. This was in terms of:

- completing all appropriate lines of enquiry
- obtaining accounts from officers
- addressing the discrimination complaint
- asking probing questions (where appropriate)
- making an appropriate assessment of severity
- appropriately using comparators
- reaching a suitable outcome

**26.** Given that we consider that there has been sufficient time to embed the guidelines, improvements in the way that allegations of discrimination are handled should now be noticeable. This is not as apparent as we would expect. We recognise that there are factors that may have impacted on this. There have been changes in the way that discrimination complaints are handled at each of the three forces we reviewed. In some cases, these complaints are dealt with by small, experienced teams or staff with enhanced training. Other forces were preparing for the introduction of new organisational structures and processes.

**27.** Our discussions with complaint investigators were positive and provided some reassurance that the forces we visited are working to understand and apply the guidelines. The discussions confirmed their understanding of good practice, the value of complainant engagement, and a consensus view that the revised guidelines are an improvement on our previous guidance.

## Assessing the seriousness of the complaint/conduct matter

**28.** All complaints and recordable conduct matters should be assessed to establish the level of seriousness. This should include a proper severity assessment where appropriate and should be done at the beginning of the process, before any actions are taken. This initial assessment is important because it sets out the basis for the investigation. We found that the quality of some assessments were too low, or lacked a clear rationale.

**29.** During our 2014 review, we found that severity assessments were not being carried out correctly. They did not take into account all the points that should be considered. In this latest review, the small number of cases we looked at does not allow us to make a meaningful comparison. However, in some of the cases we found that no severity assessment had been filed when the relevant threshold had apparently been met. When assessments were on the file, some cases were assessed as 'not misconduct' when our reviewers' assessment was these should have been assessed at the misconduct level.

**30.** Investigating officers must decide if an allegation is to be the subject of a non-special or special requirements investigation at its outset and review this

decision throughout its course. Special requirements apply where, if at any time during an investigation of a complaint, it appears to the investigator that there is an indication that a person to whose conduct the investigation relates may have:

- committed a criminal offence; or
- behaved in a manner which would justify the bringing of disciplinary proceedings

In some of the cases we sampled, no rationale had been recorded to support any decision-making around the assessment. A number of cases had been assessed as non-special requirement investigations when this was not appropriate in the circumstances. It was apparent in the cases that were incorrectly assessed that the following questions had not been answered:

- Would the conduct complained of (if it were proved) justify bringing criminal or disciplinary proceedings against the person complained of?
- Would the conduct complained of (if it were proved) involve the infringement of a person's rights under Article 2 or 3 of the European Convention on Human Rights<sup>5</sup>.

**31.** Gravity factors and officers' complaint histories should form part of this decision-making in severity assessments. Gravity factors are matters that could raise the seriousness of the alleged conduct in a discrimination complaint<sup>6</sup>. While records of the officers' complaint histories were found in most of the cases we sampled, we rarely found a record to explain whether these had been viewed and, if so, if they had informed or impacted on decision-making. This is an area that needs further improvement

to ensure that forces are getting assessments right. Generally, forces are still assessing complaints as being less serious than they actually are.

## Local resolution and investigations

**32.** In 2014, we identified that a number of cases were locally resolved when it was not appropriate. We also found that when complaints were dealt with using the local resolution process they were not handled to the same standard as those dealt with by local investigation. We recommended that appropriate tests and guidance be used to test the suitability of local resolution, and that our guidance on dealing with allegations of discriminatory behaviour should be used in all cases. From the files sampled in this current review, 42 per cent (11 out of 26) of cases did not meet the requirements to be locally resolved. This is consistent with our 2014 review, which also found that 42 per cent (23 of 55) of cases were resolved by local resolution inappropriately.

**33.** The quality of local resolution remains a concern:

- There was often no clear record of an agreed action plan. In the few cases where action plans were recorded, the plans were poor and the actions were not clear. For example, one action plan described, "discussed with complainant" as an action. This is not an action that addresses a complaint of discrimination. It lacks clear purpose or a tangible outcome.
- It was frequently difficult to see what the outcome of the local resolution was.

<sup>5</sup> IPCC Statutory Guidance, section 5.10 and paragraph 6, schedule 3 *Police Reform Act 2002*.

<sup>6</sup> IPCC Guidelines for Handling Allegations of Discrimination, section 3.4.

- In the files we sampled across the three forces, none used local resolution forms. These forms allow the action plan to be recorded clearly and audited later.
34. Often, files were incomplete and there were insufficient records, if any, of what had happened. We found similar issues (lack of resolution or recording of outcomes) during our 2014 review. Many cases, letters and files lacked accounts from officers, or an explanation to the complainant of the outcome of the investigation into their complaint. Officers' complaint histories were rarely considered, meaning that valuable opportunities to identify patterns or trends were missed.
35. In a good example of a local resolution by one force, the investigating officer was not satisfied with the officers' written responses because they did not address the discrimination element of the complaint. The investigating officer asked for more detail to address the discrimination allegation. This is good practice and something that investigating officers should be doing when an allegation is not addressed adequately.
36. Case study 1 was locally resolved by one force.

## Case study 1: Suitability of local resolution

**A** complainant alleged that officers saw him opening his shop as they drove by. They came into the shop and said they were looking for a black man. They told him about an incident nearby. He lived in a different area. The officers showed the man in the shop a picture of the offender who did not look like him.

Officers made the man strip down to his waist to check if he had tattoos. This was done in front of a customer and humiliated the complainant. The man felt he was targeted unfairly by the police and said they were laughing and trying to provoke him into a verbal confrontation. He believed their behaviour was racially motivated.

The complaint was considered suitable for local resolution. No accounts were taken from the officers. Only their pocket note books were reviewed. The investigating officer met with the complainant. However,

no record was made of their discussion and it was not clear what action plan, if any, was agreed.

This case was not suitable for local resolution. It included allegations that:

- the police discriminated against the man because he was black
- the man had to remove his clothing in a public place, which may be a breach of police powers to strip search
- the officers tried to provoke an argument, which may be a breach of the standard of professional behaviour relating to authority, respect and courtesy

The officers should have been asked about why they went into the shop, and the grounds for their belief that the complainant was the man they were looking for. The allegations, if proved, could warrant criminal or disciplinary proceedings.

## Accounts from police officers and police staff

**37.** Our previous review found that accounts were not being obtained from officers and officers were not being interviewed as part of investigations into complaints involving discrimination. We also highlighted the problem of reasonable lines of enquiry being missed. These included failing to take accounts from witnesses or officers. The current review found a small number of cases where, in our view, interviews that would have been appropriate had not been arranged. In 76 per cent (50 of 66) of the cases we sampled we were satisfied that written responses would be sufficient.

**38.** In only 10 of the cases in our sample, we concluded that the officer should have been interviewed about the complaint. This demonstrated that interviews are not always necessary. But investigating officers must explore and probe the complaint to enable them to provide a thorough explanation about the action taken. Only four cases resulted in officers being interviewed.

**39.** Our 2014 review highlighted that officers' accounts were either not being taken because the responses were not present on the file, or the accounts obtained required further probing. This latest review shows a similar picture. In 27 per cent (18 of 66) of the cases investigated, no account at all was obtained from the officer who was the subject of the complaint.

**40.** The IPCC's Statutory Guidance<sup>7</sup> states that where the investigator seeks an account from a person who is the subject of investigation, there must be an auditable record of it. In ten of the cases we sampled, investigators relied on verbal responses from officers without documenting them.

**41.** Where officers' accounts were obtained, there was a lack of auditable accounts. Only 27 per cent (13 of the 48 cases where accounts were taken) had a copy of the officer's account in the file. This has, however, increased since the 2014 figure of 18 per cent. This has, however, increased since the 2014 figure of 18 per cent.

Without an auditable officer account it is not possible to assess:

- what allegations had been put to the officer
- if the officers responded fully to the allegations against them
- if officers simply denied the allegations

When serious allegations are made, taking verbal accounts from officers and noting them in the investigating officer's report is not adequate.

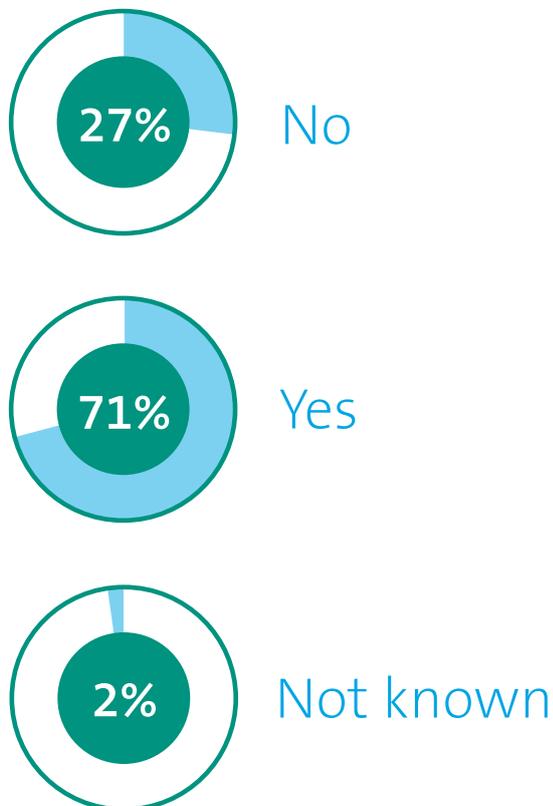
**42.** In most cases where officers were asked to give an account, they were not asked probing and exploratory questions. In the main, written and verbal responses appeared to be simply accepted. Again, this was something highlighted in our 2014 review.

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<sup>7</sup> The IPCC publishes Statutory Guidance, approved by the Home Secretary, which provides guidance to police forces about how to comply with their legal obligations under the *Police Reform Act 2002*.

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Was an account obtained from the officer



44. Our guidelines for investigating allegations of discriminatory behaviour provide support for the discrimination tests. This specifically guides investigating officers in how to answer the question about whether a person was treated differently, or less favourably, because of a protected characteristic.

45. In 61 per cent of cases sampled (40 of 66) during this review, this test was not applied and an answer to this essential question was not provided. We acknowledge that the question does not apply in all cases. Whether it is relevant depends on the allegation that has been made and we have taken this into account.

43. In this follow-up review we found that probing questions were asked in just four cases. In the other cases we saw, there were examples of closed questions being asked: for example: “Did you discriminate against the complainant?” This made it easy for the officer to simply deny the allegation. The guidelines provide examples of probing questions that can be put to officers. It is not acceptable to overlook basic investigative skills, such as asking exploratory questions, when investigating an allegation – particularly when it involves discrimination.

## Case study 2: Considering comparator evidence

**A** man, the only Asian driver, was given a parking ticket when other drivers in a similar situation were not. Although the man admitted parking on double yellow lines, he said that four other people who had also parked there were not given a ticket.

The investigating officer looked at how the other drivers had been treated and whether they had been given tickets. He was then able to assess whether the complainant had indeed been treated differently. He was able to demonstrate that the officer had spoken to all the drivers. Only the complainant had initially refused to move and this explained the difference in treatment.

## Case study 3: Exploring all lines of enquiry

**A** black Caribbean man was stopped driving his daughter's car. He believed he was stopped because he was black. The officer said the man's personal details did not match those of the car owner and this is why he stopped him. However, the reasons why the officer decided to check the details, and the original reasons for stopping the car, were not established as part of this investigation.

The investigating officer should have explored what motivated the check. For comparison, they should have looked at other drivers the officer had stopped and their ethnicity over a representative period. This would have identified any patterns.

## Comparator evidence<sup>8</sup>

46. From the files in our sample we found very few cases where investigators had looked at comparator evidence. We recognise that comparator evidence is not always available. However, in about a quarter of the investigations we sampled, we considered that it would have been. Comparator evidence was available in 29 per cent (19 of 66) of cases, but gathered and assessed in only 8 per cent (5 of 66).
47. In the few cases where this evidence was used, we found some good examples. One example is described in case study 2, where the investigating officer assessed this comparator evidence as part of his investigation and used this to inform his conclusions and address a complaint of discrimination.

<sup>8</sup> Comparator evidence is where you compare how one person has been treated against another in the same situation but who does not have the same protected characteristic.

## Exploring all lines of enquiry

**48.** During our last review, we highlighted that when an allegation involved one person's word against another, forces usually failed to explore all other lines of enquiry. This led to the officer's version of events being given more weight than the complainant's account.

**49.** From the files sampled in this review, we found that in 61 per cent (40 of 66) of cases, further lines of enquiry would have been proportionate, but these had not been explored by the investigating officer. These included:

- not obtaining an account from the officer who was the subject of the complaint
- not obtaining an account from an independent witness
- not obtaining an account from a second officer present at the scene
- not looking at comparator evidence to establish if there were any patterns in an officer's complaint history

## Making a decision

**50.** In our 2014 review, none of the investigations into complaints by members of the public that we looked at had been upheld by the forces involved. Some of the issues we identified were:

- the officers' denials were simply accepted

- the investigating officers were not exploring whether, based on the evidence, it was more likely than not that something had happened
- the rationale for not upholding a complaint was not explained clearly

**51.** Similarly, in this follow up review, the forces involved had not upheld any of the discrimination complaints they had investigated. It is not possible to conclude with any certainty whether the 73 per cent of investigations that were not sufficiently investigated (40 of 55) should have been upheld, or a case to answer found against the officers who were the subjects of the complaints. This is because the investigations were either dealt with using the local resolution process, when it was not appropriate to do so, or the investigations simply did not go far enough. Had those cases been properly investigated they may well have been upheld or led to case to answer decisions.

**52.** In contrast, seven of 11 investigations in our sample, which did not originate as complaints from the public but from internal concerns about officers' conduct, were upheld or found to have a case to answer<sup>9</sup>. This compared to half of conduct cases sampled being found to have a case to answer in our previous review.

**53.** We acknowledge that a number of judicial reviews<sup>10</sup> have constrained the decisions made by investigating officers at the outcome of complaint investigations<sup>11</sup>.

<sup>9</sup> Case to answer is when in the investigator's opinion there is sufficient evidence upon which a reasonable tribunal, properly directed, could find misconduct/gross misconduct.

<sup>10</sup> These include R (on the application of the Chief Constable of West Yorkshire Police) and the Independent Police Complaints Commission (21 October 2014); R (on the application of Lawrence Green) and the Independent Police Complaints Commission (19 August 2016); and The Queen (on the application of the Chief Executive of the IPCC) and the Independent Police Complaints Commission (25 November 2016).

<sup>11</sup> When investigating complaints subject to special requirements, the role of the investigating officer is limited to determining if there is a case to answer for any officer. It follows, from the case to answer test, that a subsequent misconduct hearing or meeting may, despite the case to answer findings, decide that an officer did not breach the standards of professional behaviour. Therefore, the investigator should not also uphold a complaint on the same issues on which a case to answer was found.

We also recognise that these have influenced decision-making about special requirements investigations. These are investigations where the investigating officer considers that there is an indication of potential misconduct or criminality. In those cases, investigators cannot come to their own conclusion and uphold the complaint. This is because this is a matter for the disciplinary panel or court. However, only 24 per cent of the 66 cases that we reviewed were in this category.

54. The remaining investigations were treated as non-special requirements investigations. When a case does not meet the special requirements threshold (which, in our sample, applied to 61 per cent of cases) a complaint can be upheld, where appropriate. In 14 per cent of cases (9 of 66) it was not clear how they had been assessed and no record or rationale had been recorded.
55. The investigators we met during this review confirmed that they were confident upholding discrimination allegations when they felt it was appropriate to do so.
56. Upholding a complaint does not mean that a force accepts that the officer intentionally set out to discriminate against someone. It may be that the officer requires training about the use of appropriate language. A non-special requirements complaint can be upheld on this basis.

## Case study 4: Upholding complaints

**A** gay man alleged that an officer said to him: “You need to be a man, and you need to man up.” The man perceived this to imply that he was less of a man because of his sexuality.

The investigating officer made the decision to resolve the complaint through local resolution. An account was obtained from the officer, who apologised (albeit not in person), for what she had said. The officer explained that she had not made the comments in reference to the complainant’s sexuality, but now understood that is how they could be perceived.

The final local resolution letter was delivered in person, which is good practice. However, the complaint was not upheld and there was no outcome or learning for the officer.

Given that the officer apologised, it would have been appropriate to uphold the complaint. It was accepted that something had gone wrong. The officer should have received advice or management action<sup>12</sup>.

<sup>12</sup> The purpose of management action is to: 1) Deal with misconduct in a timely, proportionate and effective way that will command the confidence of staff, police officers, the police service and the public. 2) Identify any underlying causes or welfare considerations. 3) Improve conduct and prevent a similar situation arising in the future.

## Number of complaints upheld



## Officers' complaint histories

**57.** In our 2014 review, we reported that officers' complaint histories were not being assessed during investigations. Investigating officers should take into consideration the manner in which an officer dealt with similar incidents previously to identify any patterns. This should inform decision-making. We looked for any improvements in this area during this follow up review.

**58.** We found that an officer's complaint history had not been considered when it should have been in 33 per cent of the 40 investigations sampled. This has improved since 2014, when this figure stood at 50 per cent. In local resolution cases, we considered that this had not been done, and should have been, in 38 per cent of the cases in our sample. This is similar to the 35 per cent found in 2014.

**59.** We also found that in 33 per cent of cases, the officer's history was included on the file, but in 8 per cent of those cases the officer's history was not referred to at all. When officers' histories were referred to, the assessment rarely included any detailed information about what was learned from the history.

**60.** Although this has improved, investigating officers are still not taking the opportunity to explore this aspect of an investigation. There will be occasions when it is not necessary to view an officer's complaint history. In the majority of discrimination investigations it is an important step.

## Final letters and reports

**61.** During our last review we highlighted that there was an urgent need to improve both investigating officers' reports and the final letters to complainants. It is apparent from this review that the quality of the investigation outcome reports and final decision letters still needs to be improved. We found that in 58 per cent (32 out of 55) of the completed complaint investigations sampled, the manner in which the outcome was presented did not promote public confidence in the complaints system.

We reached this conclusion because:

- The discrimination element of the complaint was not addressed in the investigation report.
- In 17 per cent of cases, the discrimination element of the complaint was not addressed at all.
- Not all lines of enquiry were explained.
- Explanations for actions, which appeared to have been given to the complainant verbally, were not included in the report.

**62.** From our file sample we could see that poor presentation continues to undermine the integrity of investigations that are of a reasonable standard. We also found examples of inadequate explanations, which did not fully reflect the investigative work that had been completed.

**63.** Case study 5 demonstrates some of the issues we found in reports and letters. We also found that while some cases lacked information about the investigation that had taken place, others showed failures in the investigation. In addition, we found that in 17 per cent of cases the

### Case study 5: Outcome letters

**A** complainant alleged that the seizure of her car during a police operation was discriminatory because it was racially motivated. The case file indicated that the investigator spoke to the complainant to provide an explanation about the incident. This referred to CCTV and audio recordings from the police car. In the outcome letter, however, no explanation was provided about the context of the police operation at the time, and the number of cars stopped and seized during the operation.

final report/letter did not address the discrimination element of the complaint at all. We emphasise that investigations into allegations of discrimination can be undermined if forces fail to engage adequately with the complainant at the end of the investigation.

### Withdrawn complaints

**64.** Fourteen of the sample complaint cases were recorded as having been withdrawn by the forces involved. Thirteen of the complaint cases in our sample were withdrawn by the complainant. In all but one of these, the reason for withdrawing the complaint was not recorded.

**65.** In cases where the complainant does not wish to pursue their complaint, the force should consider continuing with the complaint as an internal conduct matter without the complainant's involvement. Of the 14 complaints that were withdrawn, the forces should have continued to investigate three as conduct matters. The behaviour alleged in the complaints, regardless of the complaints being withdrawn, warranted further investigation.

## IPCC appeals

**66.** During 2016<sup>13</sup>, we closed 86 appeals from all forces in England and Wales, about complaints that included an allegation of discrimination. These complaints were made after 1 October 2015<sup>14</sup>. A greater percentage of these appeals were upheld than the overall average – 47 per cent (40) of appeals relating to a discrimination complaint. This compares to 36 per cent of all the appeals closed during this period.

**67.** In nine per cent of the upheld appeals, the appeal decision was not about the allegation of discrimination. In 61 per cent, the direction was to re-investigate parts of the complaint, including the allegation of discrimination.

**68.** Appeals were generally upheld and directions made for re-investigation because the discrimination guidelines had not been applied to the investigation. This may indicate a lack of awareness of the guidelines or lack of training.

## Outcome of appeals



**69.** There were a number of cases where complainants were not given the opportunity to explain how the alleged conduct made them feel and why they felt they had experienced discrimination.

**70.** We found some examples where, despite a complainant making clear allegations of discriminatory behaviour, the force did not record the complaint. Subsequent investigation appeals to the IPCC led to us recommending that the force recorded the complaint.

<sup>13</sup> Closed between 01 January 2016 and 31 December 2016. This is not in line with the IPCC's reporting years and was done to capture the greatest number of cases. In this way we collect the most data possible and draw more meaningful inferences.

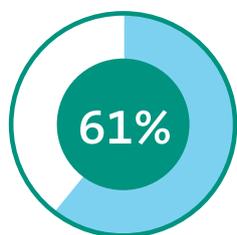
<sup>14</sup> This means the complaint was made after the publication of our revised guidelines for the investigation of discriminatory behaviour.

**71.** Common themes across appeals that had been upheld were that investigators had:

- not identified or considered the availability of comparator evidence
- missed lines of enquiry
- failed to obtain witness evidence

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### Directions made in upheld discrimination appeals



Re-investigate allegation of discrimination



Other



Not regarding allegation of discrimination



Information only

## Conduct investigations

**72.** We found that there has been significant improvement in the way that conduct matters were investigated. The investigations were more thorough and robust than those examined in our previous review. We also found evidence in our current review of officers feeling confident about reporting colleagues' discriminatory behaviour. Of the conduct cases we sampled, 78 per cent were reported by fellow officers.

**73.** In comparison to our 2014 review, this review found fewer investigations into officer's conduct where assessments of the severity of the allegation had been downgraded or incorrectly assessed. Two of the 11 conduct cases we reviewed had the severity assessment reduced from gross misconduct to misconduct. We were content with the thorough rationale provided for one case. However, no rationale had been recorded for the other case. With the exception of one, the cases were dealt with robustly and we considered the outcomes to be appropriate. In the cases we sampled, the issues highlighted during our last review appear to have been addressed by all three forces, although we noted the smaller sample size for this review.

## Discrimination action plans

**74.** After publishing our revised guidelines in September 2015, we invited all forces to submit action plans setting out how they would embed and adhere to the guidance. The plans we received have informed this review. Section 8 of the guidelines detailed the areas that forces should focus on to ensure improvements were achieved.

- 75.** We received action plans from 74 per cent (32 of 43) of police forces. Some were very detailed and addressed all the key areas. Others provided very brief information about any proposed actions.
- 76.** Forces were asked to focus on the following key areas:
- recording an initial contact
  - training
  - quality assurance
  - monitoring of complaint handling
  - collection of equalities information
  - promoting access to the complaints system
- 77.** Most of the forces that supplied a plan to us had arranged training on the discrimination guidelines for their complaints handling staff. Most had also distributed the guidelines to the appropriate officers. This action was confirmed in our discussions with investigative staff during our review.
- 78.** Other forces discussed developing bespoke training and e-learning/ presentations, and one PSD dedicated annual departmental training days to briefing PSD investigators on the guidelines. In September and October 2015, our Force Liaison and Oversight team delivered a presentation on the guidelines to all PSDs. However, training should be an ongoing process rather than a one-off event.
- 79.** Almost half of the forces that submitted an action plan said that allegations involving discrimination were investigated only by PSDs, and not by divisional officers<sup>15</sup>. We discussed this approach with investigators during this review. It was evident that using designated teams to investigate discrimination complaints provides scope for formal and informal development. This helps provide consistency in the way that the discrimination guidelines are applied.
- 80.** Only some of the forces described having a quality assurance process in place. These included internal dip sampling and reviews carried out by heads of PSDs.
- 81.** Not all forces told us about their arrangements for reviewing closed cases and independently auditing them. However, those forces that did respond on this point (15 of the 43 forces) appear to have a consistent approach. The majority have involved, or intend to involve, their police and crime commissioner, as well as local community groups and independent residents' panels to review cases.
- 82.** One force in particular plans to provide information and training to groups that are the focus of hate crimes on how to access police support or make complaints. Building professional relationships with local community/voluntary organisations is a positive way to improve understanding of the complaints system. It also encourages two-way engagement with organisations that have expertise in discrimination and hate crime.
- 83.** Some forces have made efforts to implement the recommendations we have made to improve access to the police complaints system. In particular, forces have focused on updating and rewriting their online complaints information and complaint forms. This extends to the collection of equalities data, and work to update complaint forms to ensure that this information is captured. Many forces

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<sup>15</sup> A divisional officer is a police officer who is not part of PSD, or based at a police headquarters, but is based in a regional police station or division.

now also include an explanation on their complaint forms about why they are collecting equalities data.

- 84.** Overall, a number of forces have taken positive steps to embed the new guidelines and improve the way they handle discrimination complaints. However, it is essential that:
- all forces implement and actively comply with the guidelines
  - structured quality assurance processes are in place
  - investigating officers receive suitable training
- 85.** PSDs report that they are working with stakeholder and community groups to gain a better understanding of the diverse groups in their areas. Whether this work is being shared with frontline officers as part of learning/training has not been established. Officers do not appear to be receiving diversity training, other than the training that forms part of their induction.

# Conclusions

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**86.** Our 2014 report said that forces should apply our guidelines for handling allegations of discrimination to all complaints that include an allegation of discrimination. A number of issues identified during this review indicate that forces are not fully following our guidance and implementing our recommendations. This review strongly reiterates our previous recommendations, and emphasises the need for forces to apply our guidelines when investigating allegations of discrimination.

**87.** A majority of the investigations we reviewed did not go far enough to address discrimination allegations, and a number of lines of enquiry were missed. On this basis, forces need to ensure that investigators receive adequate training on how to apply our discrimination guidelines.

**88.** Our review has also highlighted the need for quality control processes to be implemented or improved to address the quality issues we have raised in this report.

**89.** We do, however, acknowledge that the forces involved in this review have made, and are continuing to make, gradual improvements in their approach to handling allegations of discriminations. We have also found a willingness to develop knowledge and processes to improve the handling of all complaints. Our discussions with investigators confirmed that they have a good grasp of the guidelines and their application.

We therefore hope to see further improvements in the coming months if forces follow our recommendations. The recommendations we make in this report should assist this.

## Next steps

**90.** We ask all forces to review and discuss this report, and our previous report, to identify where they can adopt the good practice examples.

**91.** We also ask that forces review our recommendations and apply them to their investigations.

**92.** We will discuss the findings of this review with all forces during our ongoing oversight work to ensure that there is good understanding about our expectations.

**93.** We will continue to monitor the responses to allegations of discrimination in ongoing reviews and, where appropriate, in consultation with other organisations.

# Recommendations

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**94.** Forces should implement our guidelines for handling allegations of discrimination, with particular attention to:

- Assessing and recording the seriousness of the complaint, including consideration of the officer's complaint history.
- Keeping clear, auditable local resolution records, which should include achievable action plans and provide complainants with a proper outcome.
- Ensuring that auditable accounts from officers are recorded on every file, even when a verbal account has been obtained. As a minimum, a written auditable account should be obtained and, if necessary, a further account or interview should be carried out.
- Putting the full detail of the allegations to the officer involved.
- Asking officers probing and exploratory questions. There are examples of open questions in our guidelines.
- Using comparator evidence to help identify any differences or consistencies in the way officers treat members of the public. This will provide further evidence to support decision-making.
- Upholding complaints in investigations that do not raise issues of misconduct, if it is accepted that what the complainant is alleging has happened. This is an acceptance that something has gone wrong and provides an opportunity for learning.
- Reviewing officers' complaint histories to establish if there are patterns or trends in the alleged behaviour.
- Ensuring that final reports/letters to complainants clearly address discrimination complaints and provide a full explanation of the investigation that has been carried out.
- Reviewing final reports/letters for quality to ensure that they provide the complainant with an explanation and, if necessary, information about subsequent action.
- Recording rationale for continuing or not continuing an investigation if a complaint is withdrawn.