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**POLICING BLACK PEOPLE : A STUDY  
OF ETHNIC RELATIONS AS SEEN THROUGH THE POLICE  
COMPLAINTS SYSTEM**

**A thesis submitted to Middlesex University in partial fulfilment of the  
requirements for the degree of Doctor of Philosophy**

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## **Abstract of Thesis**

This thesis examines public attitude towards police services and, more particularly, police misconduct. It contextualises and explains the current complaints system, especially whether it satisfies the complainant and endears public confidence. It shows how aberrant police behaviour exposes some of the sociological issues such as black over-representation in complaints statistics, alleged black provocation in situational street incidents, substantiation rates and the likely outcome of black and Asian complaints.

Analysis of the main sociological texts on the police suggest a continuing problem with the vexed issue of constabulary independence. The autonomous nature of this principle has helped to create partiality in terms of complaints that favour the police against the citizen. In the eyes of some citizens this has tended to reduce the legitimacy of the complaints process. The main analysis suggests that certain policing practices have a greater impact on diverse sections of the public which, when coupled with under-use of the complaints process tends to put a stopper in the bottle of fermenting discontent. To restore confidence and involve those who are socially excluded, the dysfunctional effects of inaccessibility, complication and inequality should give way to easy access, simplification and informality.

The thesis addresses these problems by suggesting a move to more utilitarian ideals designed to be more customer focused. The model of “good practice” is prescriptive and ensures an independent lay element to complaints investigation and resolution. The principle of civil libertarian ideals prevails in the proposed model and this seeks to redress the balance where justice must not only be done but also be seen to be done.

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# INTRODUCTION

## BACKGROUND TO THE THESIS

“You can’t solve a problem? Well get down and investigate the present facts and the past history. When you have investigated the problem, you will know how to solve it. Only a blockhead cudgels his brains on his own or together with a group to ‘find a solution’ or ‘evolve an idea’ without making an investigation. ” (Corrigan, 1979, p5).

Most large organisations who deal with the general public have mechanisms which cope with public dissatisfaction and complaint. The police are no different except they have to take certain legal considerations into account. The police are not a private company, do not sell a product and are not reliant on making a profit. Instead they are a public organisation which provides a level of service at public expense; funded by the taxpayer. This service is subject to public consent and approval. This means that, roughly translated, if they were a business, the public would be shareholders. Whilst companies acknowledge fiscal accountability the police are held to account through the law and the complaints process making them answerable to the public. They have a duty to provide this service in a competent, efficient and fair manner (Maguire and Corbett 1991, p10).

The general theme of this thesis focuses on the public attitude towards police services and, more particularly, police misconduct. The central question within this theme is the particularly difficult issue of police and ethnic relations, especially in terms of police practice which still seems to impact disproportionately and unjustly on diverse sections of the community. Redress for ethnic minority groups against police misconduct is still limited because the system of complaints is designed for the inclusive and powerful not the exclusive or powerless members of society.

For this reason I have considered police misconduct in terms of ethnicity of the complainant by examining and critically assessing the police complaints system of England and Wales.

## NEW MANAGERIALISM- RECASTING POLICE MANAGEMENT

In the last twenty years there have been great changes in police management and policing style. This originated in the post- Scarman era and marked a

shift from the narrow conception of their function to one more orientated to wider social aspects of crime. This saw a change in the role of the police from one fettered in crime control to one of “community policing” where “service” was replaced with “force” and where the public were seen as partners in the fight against crime. This notion was originally attributed to John Alderson the Chief Constable of Devon and Cornwall at the end of the 1970`s but was later developed by Sir Kenneth Newman, the Metropolitan Police Commissioner, who introduced new policing and management strategies in the spirit of Scarman (Reiner, 1985, p200).

Tactics associated with this more liberal policing style were the multi-agency approach, neighbourhood watch, consultative committees, lay visitors, crime prevention panels, victim support schemes and the enhancement of the Special Constabulary (Reiner, 1991, p106). This marked the start of a change in management style on a number of different levels which certainly from an operational perspective, admitted that the police could no longer fight crime alone and needed the public`s help to do so. Whilst progress was being made in respect of matters of management attempts at consultation especially with the black communities stalled. For the notion of “community policing” to work four principles must exist. There must be an understanding of equality, communication, consultation and representation. Against this backdrop of liberal ideals in policing, black people still remained excluded, powerless and disenfranchised.

Whilst post-Scarman policing strategies altered the role of the police it also changed the way senior officers managed their resources. Policing developed against a backdrop where key police objectives including results, value for money and the need to improve service delivery predominated although often this did not necessarily mean that the end result was customer satisfaction. This factor also impacts on members of ethnic minority groups, as there is overwhelming evidence that customer service is sacrificed in order to achieve targets and performance indicators.

During the early 1990`s there were further initiatives to alter the character of police management and enhance managerial to control police culture which was seen as attributing good practice. This recasting brought with it a raft of measures to defeat a culture rooted in the military bureaucratic model, an extreme form of aggressive policing, in an effort to shift towards more normative methods. The military bureaucratic model was widely blamed for much of what was wrong with the police culture especially regarding the issue of deteriorating ethnic relations. Bolstering police complaints legislation in 1996 and 1999 attempted to place disciplinary authority back

into the hands of management. Other rules were also introduced to raise standards and prevent apparent abuse in respect of absence due to sickness that enabled sick, lame and lazy officers to be dealt with by a system that ensured an effective, monitoring, and control strategy.

Furthermore, in the news, the police were projected into the public spotlight as a result of a number of high profile *causes celebre* surrounding alleged police misconduct and corruption. These miscarriages of justice e.g. the Guildford Four, Birmingham Six and Tottenham Three, heightened public awareness in relation to police behaviour generally. The high profile cases were serious in nature and highlighted the inability of a legal system and complaints process to deal satisfactorily with police misconduct. In essence the process disclosed a flawed system of redress where police misconduct had serious social concerns and ramifications for society.

The nature of the problem can be summed up as:

Does the current system fulfil public expectation given police possession of unique coercive authority and discretionary powers? If one accepts the shortcomings in other mechanisms of police accountability then this places a particularly heavy burden on the complaints system. Getting this right is an essential component for public satisfaction and adds legitimacy to the ability of police to deliver and enforce the concept of policing by consent.

The nature of the problem raises three distinct questions. These are:

- 1) Do the aims of the complaints system effectively deal with police misconduct?
- 2) Do they satisfy the complainant?
- 3) Does the system win the confidence of the public?

Only a handful of sociological publications specifically related to the issue of police complaints have been published since 1964. Very little research has been conducted on police misconduct because access is often denied on the grounds of security and confidentiality. Against the backdrop of changing managerial style and purpose this research seeks to identify the hidden figure of police complaints and see if the police complaints system is failing ethnic minorities.

In response to these growing concerns and given the relative paucity of data on police complaints I set out to investigate the problems with a view to



creating “good practice” that was more customer, rather than dissenter focused.

#### **SPECIFIC TASKS INVOLVED IN THE RESEARCH**

- 1. To deconstruct and make sense of a complex system of police complaints as a means of holding the police individually and organisationally to account.**
- 2. To evaluate the historical, political, legal, organisational and social legacy of the system as a process of accountability.**
- 3. To investigate and evaluate the changing managerial response to police misconduct.**
- 4. To evaluate the attitudes and experience of ethnic minorities to police misconduct**

#### **THE AIMS OF THE STUDY**

- 1. To see if the complaints system works and is effective particularly relating to ethnic minorities.**
- 2. To see if the system is widely used, endears public confidence and satisfies the complainant.**
- 3. To consider the changing role of police, accountability and constabulary independence in terms of complaints.**
- 4. To develop a prescriptive “Good Practice” model which overcomes the problems associated with the police complaints process.**

#### **THE INVESTIGATION**

**This thesis examines the practical and theoretical context of complaints against the police. Research was conducted using two different methods in order to build up a picture of police complaints in the context of the police culture. This was evidenced in the first instance through the analysis of police statistics and later with the use of victim surveys. Originally I felt that**

I would be able to answer the research questions confidently by analysing data supplied by the Police Complaints Authority (PCA). However as time progressed I felt increasingly unable to do this because of the insufficiency of this method e.g. little if any data existed on black complainants. It was at this point that I crossed from analysis of statistical data gathered centrally in favour of a left realist approach emphasising local surveys of the public.

The data regarding public attitude to police services was gathered by researchers as part of the Finsbury Park Crime Survey, and funded by the Department of the Environment in conjunction with the Centre for Criminology at Middlesex University. The interview fieldwork for the survey took place between July and November 1991 and was one of the largest, most detailed and concentrated local survey ever undertaken, costing just under £50,000. A considerable amount of preparation was undertaken in training interviewers to ensure that care, attention to detail and confidentiality was achieved. Questions were asked about a wide range of crime related topics including levels of satisfaction, performance and services provided by the police.

The use of victim surveys facilitated an understanding of the impact and effects on victims of police misconduct - especially the poor, black, vulnerable, female and the least powerful in society. This method served both qualitative and quantitative objectives by providing not only a mapping of the problem but also identifying patterns of victimisation and injustice. Such a radical victimology enables consideration of crimes against the vulnerable groups and intra group crime but also focuses on the crimes of the powerful (Jones *et al* 1986). In this way the realist approach to the research question allows a critical perspective regarding the nature of police complaints statistics. Jones *et al* note how such research identifies the four dimensions of critical analysis;

“Victimisation studies fit into the paradigm to the extent that they indeed represent an audit of peoples experiences, anxieties and problems of crime. Further, as victimisation studies extended themselves from a study of the victim to that of the police, to public attitudes to penalty etc. they began to provide the sort of empirical basis necessary for a realist criminology” (1986, p3-4).

## GETTING STARTED

The starting point for this study was the liberal belief that the police complaints system existed to deal with all police misconduct and ensured

equal access to all in society, thus attracting the confidence of the public to use it.

Having been a police officer within the Metropolitan Police working at various levels with the organisation, amongst my many responsibilities and functions was dealing with police discipline and complaints against the police. In so doing I developed an expertise in complaints management, legislation and practice which although intricate and complex, has allowed me to assess the police complaints system critically. In 1996, having retired from the police, I contacted the Police Complaints Authority (PCA), who had published some concerns in their Annual Report of the same year regarding the issue of policing ethnic minorities. As a result of my inquiry, expertise and obvious interest, I was invited to a meeting with the Chairman Mr. Peter Moorhouse and Deputy Chairman Mr. John Cartwright at the offices of the PCA. There we discussed those concerns which primarily focused on whether or not the police complaints system was failing members of ethnic minority groups; a perceptive move given the rather infamously flawed police investigation into the murder of Stephen Lawrence, by the Metropolitan Police, between 1993 and 1997. The meeting concluded with an agreement of joint co-operation, access and exchange of information. It was also agreed that research would form part of my Doctoral Thesis which should focus on establishing the real picture of general public satisfaction with police behaviour. This research would also encompass the contentment with policing expressed by diverse sections of society. The title of the thesis was originally agreed as "Ethnicity and the Police Complaints System of England and Wales".

I set about considering the methods by which I would best be able to consider the nature of the problem. I reviewed the relevant literature and collected as much centrally recorded data as possible from the PCA. The PCA did provide me with a significant amount of data on recorded complaints held on their computer system or published in Annual Reports to the Home Secretary. They also gave details of (unpublished) national consumer surveys, which they had commissioned from an outside organisation. The details of ethnic minority complaints was extremely limited as the PCA had only started gathering such data in 1994, so there was only at best one years data on the subject to analyse. Additionally the PCA computer system was old and specific requirements were difficult to access. This was more to do with the age of the system rather than the lack of co-operation on the part of the PCA. Although efforts were being made to find capital expenditure to purchase a better system, in the early stages progress was slow. Often the data required was not available, not collected

or too time consuming to obtain. Co-operation with the PCA continued until early 1999 when the final report was completed and presented to them.

I have briefly introduced the background of the debate of police complaints and the recent managerial position taken by senior officers to cope with police misconduct. There is, however, much more to do to satisfy public concerns and this thesis develops a prescriptive model of 'good practice' that addresses those concerns. This thesis will argue that there is much in the system which is good and should be retained. However the remainder fails to address the issues, satisfy the complainant and deal with the flawed discipline and complaints system.

In my view the new managerialist methods conflict with the expression of public opinion and debate because new liberal styles fail to acknowledge faults in the system such as under-use, prejudice and equal opportunity in terms of race, class and social exclusion. Public confidence in the police complaints system needs restoring not only in respect of serious matters but also in respect of minor infractions. Public co-operation is sought from police to help fight crime at one level whilst, on another, police complaints are stymied by a secret, hidden and covert system which lacks any form of local police accountability, response or support. The public perception is of a clandestine complaints system, which is shrouded in mystery and obfuscates openness, honesty and integrity. This poses the question why the public should co-operate with police on crime fighting matters when they are excluded from any form of ownership of the complaints process. This presents a challenge for management who have via post-Scarmanist strategies expressed "Community consultation" as an over-riding principle for police, yet police managerial strategy is for greater control of discipline and complaints and not a diminishing of this position. Here is where the problem lies - not so much with the police willingness and enthusiasm to deal with complaints - but in their reluctance to step backwards and allow civilian independent investigation and decision making about police misconduct. Their response is one of rejection and denial because they argue that they are the best agents to discover, investigate and deal with malpractice because of their special unique knowledge of police officers, their culture and practices. This fails to take into account the fact that, whilst these assertions may well be accurate, the current system no longer satisfies the public.

The model attempts to find a more appropriate way forward. Any effective system of complaint must encompass public support where its credibility and probity rely on justice not only being done, but also being seen to be done. This thesis contextualises the arguments, critically evaluates the changes in

police discipline and proposes new methods with which to satisfy external concern.

## THE STRUCTURE OF THE THESIS

Chapter One describes and evaluates the Police Complaints System historically, legally, institutionally and socially. It considers the debates, which include external control and overview of investigations into police misconduct. This is achieved by considering the literature on police malpractice which not only addresses complaints in England and Wales but also those of other jurisdictions around the world.

Chapter Two focuses on the origins of a disciplined police force introduced in 1829. It helps us contrast a harsh and punitive system of discipline without recourse to appeal during difficult times.

Chapter Three - Police Control and Accountability considers the notions of police accountability and constabulary independence in England and Wales. It does this by examining the power sharing roles of the tri-partite arrangement that makes up the constabulary system of governance.

Chapter Four is concerned with managing police complaints. It looks at the changing nature of complaints management and role of managers. It considers how managers have attempted to change the policing style rooted within the police culture that is associated with racist, homophobic and sexist behaviour. The dilemma of managerial professionalism is discussed with reference to a move towards the independence of complaints investigation which seemingly works against management philosophy that considers firmer inside control of the problem to be the answer.

Chapter Five deals with the problem of police and ethnic relations from a variety of perspectives. It considers the historical legacy in terms of complaints and urban unrest. It shows exclusion and disproportionate focusing by the police on the black and Asian communities. It concludes with a case study of the murder investigation relating to Stephen Lawrence and shows this as a dramatic example of police failure and institutional racism.

Chapter Six considers stopping and searching the public. It considers the legal aspects, historical dimension and impact this practice has upon citizens. It discloses a disproportional focus on the poor, the young, black and socially excluded members who are regularly the targets of this practice.

Chapter Seven relates to the statistical patterning of complaints and the evaluation of complaints data supplied by the PCA. The chapter considers the forty-three Police Forces of England and Wales in terms of area, population and behaviour of police.

Chapter Eight deals with the survey results by outlining and evaluating the data that considers police/public contacts and citizen complaints. It reveals the hitherto hidden figure of complaints and public dissatisfaction. It shows how the complaints process is failing members of ethnic minority groups.

Chapter Nine is the concluding chapter which highlights the contribution of the thesis. It proposes and develops a model of good practice which balances the needs of the police and the citizen to produce a workable system of redress.

In the first Appendix I consider the two research methods employed in this thesis i.e. the analysis of statistics and the victim survey method. It shows the sources of data and literature used. It outlines the theoretical perspectives adopted and criticises both methodologies of analysis in terms of police complaints statistics. It examines the sources of data and discloses problems and limitations in respect of reporting and recording using a realist critique. It exposes the limitations of victim surveys and highlights the advantages to this method of analysis.

Appendix Two deals with the Police Discipline code (1920) which was the first set of stated internal disciplinary rules brought in to professionalise the police. These rules formed the code of practice which ran in parallel to the law and remained largely unchanged until 1999.

Appendix Three contains the Police Discipline Code (1952) which uses the 1920 version as a basis but includes three new sections 16 - 18 (lending

money, being convicted of criminal offence and being an accessory to a disciplinary offence.

Appendix Four updates the Police Discipline Code by taking the 1952 version as a base and including racially discriminatory behaviour - encompassing the code within the Police and Criminal Evidence Act 1984. To date these codes have provided police officers with a list on conduct which is undesirable.

Appendix Five contains the code of ethics entitled the Police Code of Conduct (1999) introduced under legislation as part of the Police (Conduct) Regulations 1999. This legislation introduced measures which changed the disciplinary code from undesirable behaviour to worthy conduct, something to aspire to rather than a list of do nots.

Appendix Six contains a template document which introduces the Complaints against police proforma as part of the good practice model shown in chapter 9.

Appendix Seven contains another model of "good practice" called the Liberty Model which suggests a system of Independent Investigations of police complaints as a means of improving public confidence.

Appendix Eight presents another model of good practice which was commissioned by the Government called the KPMG Model devised by the City Accountants of the same name.

Appendix Nine contains the complaints system recently introducing the Police Ombudsman for Northern Ireland. This appendix shows the Police Ombudsman's aims and mission.

Appendix Ten reproduces the Home Office discussion document entitled "Complaints Against the Police". This is a framework document for a new system of police complaints which was published in response to the models proposed by both Liberty and KPMG. Published in December 2000 it proposes change which may be introduced in 2003.

Appendix Eleven reproduces the letters of correspondence from the Police Complaints Authority (PCA) showing the initial start and development of research topic.

Appendix Twelve is a reproduction of chapter 6 - "Being Realistic about Stop and Search" from After Macpherson : Policing after the Stephen Lawrence Inquiry. Alan Marlow and Barry Loveday (eds), Russell House Publishing, Lyme Regis.



## CHAPTER ONE

### THE POLICE COMPLAINTS SYSTEM

#### CONTROLLING POLICE MISCONDUCT

One of the fundamental criticisms of the police in England and Wales directly relates to the complaints system. The problem can be traced back to the early 1960's, when the police were placed for the first time under the public spot light. Observers found that the myth of the police as neutral law enforcement agencies gave way to the more realistic notion that they employed discretionary powers and relatively unstructured judgements about what laws to enforce, against whom and under what circumstances (Skolnick, 1966). The changing styles of policing, police management and in particular "Community Policing", introduced in the early 1990's, stressed co-operation, partnership and assistance, which were at odds with the ethos of the police complaints system; shrouded in secrecy, private and purely the business of the police. This juxtaposition required help and support from the public in policing at one level, whilst on another level continued to be obstructive and devious about complaints. The lack of honesty and transparency from the police in police complaints compounded the problems which came to a head by the end of the 1990's.

The Police Act 1996 has attempted to overhaul, modernise and update the police complaints system and disciplinary processes, but much of it is bolted onto a seemingly imperfect system. Furthermore, new police regulations implemented on 1st April 1999 reconstituted police discipline (but not police complaints) by introducing a radical new system which allowed for re-taking control of police discipline and complaints (Metropolitan Police Special Notice 5/99). This allowed police management to be more proactive and better able to weed out sick, errant, lazy and dishonest police officers than previously. Such changes, it was hoped, would ensure that police officers were made more personally and individually responsible; *answerable for what they did and how they did it.*

The subject of police accountability in its current form is a contested issue and one explored later in this thesis. However, for the moment, suffice it to say that whilst police managers are confident that they are able to deliver a higher standard of police discipline, this fails to satisfy some critics who contend that the *post facto* element of police decision making is fundamentally flawed. They suggest that this is because of the secrecy of internal policy, the lack of any published rules for engaging the public and

the absence of an informed public debate makes any *post hoc* analysis problematic (McKenzie, 2000, p185).

In this chapter I consider the historical, legal, organisational and sociological perspectives of police misconduct and complaints. I place the PCA in its legal context and outline its functions and responsibilities. I critically assess many of the problems that have beset the complaints mechanism in post modern and late modern society. The criticisms are used to inform the good practice model suggested in Chapter 9. These have included the issues of civilian or independent review, sufficiency with police complaint investigations, police discretion, burden of proof, disclosure in court cases, double jeopardy, substantiation and the reluctance of juries to convict police officers standing trial. The views of complainants are also critically assessed within this chapter.

#### THE HISTORICAL CONTEXT OF POLICE POWERS, ABUSES AND REDRESS

Within the historical context it is necessary to take a global perspective and consider and evaluate police malpractice from other jurisdictions. Paul Chevigny wrote about police misconduct in his book entitled Police Powers- Police Abuses in New York City published in 1969. The publication consisted of selected cameos in chapter form that illustrated the dilemmas and problems that faced victims of police abuse. The injustice of these actions served to highlight a key difficulty; the low profile nature of police brutality, not only at street level but back in the precinct station house.

Historically redress from wrongs committed against citizens by the police has been virtually non-existent. Chevigny considered the issue of redress and found that prosecution agencies have traditionally protected the position of police. Chevigny found that in the US this protection perpetuated police misconduct and abuses. He suggested that they have sided uncritically with the police. However the purpose of the Prosecutor was clear; to find the truth, not to discriminate against defendants and jail them unlawfully. (*ibid*, p250)

Chevigny showed that there was little redress or comeback against the police for any improper or illegal practices by citizens. Instead, illegal usage and improper practices were consistent with the prevailing routine of the department which provided an informal response for dealing with recurring situations. It followed that the individual legitimised and justified illegal action when an arrest was made; in essence the ends justified the means,

even if the means were illegal. Such practices were condoned by senior officers which added solidarity and support for the individual police officer at the expense of the outsider. This notion protected the individual officer in a number of ways because it insulated him from criticism up the chain of command, and also secured an implied pledge by his colleagues not to betray another's mistakes. The awesome resources held by the police could be brought to bear on outsiders ensuring the path to redress was blocked.

Chevigny reflected on the nature of civilian complaints against police. He suggested that, in every case which had been dismissed by the courts, there should be an automatic police departmental review that allowed for *post facto* analysis of police action, and made recommendations concerning the disciplinary aspects of the case.

Chevigny reviewed the list of discrediting factors and general difficulties of complaints. He argued against the assumption that an effective tool of police reform relies on the *post factor* analysis on a case by case basis. He further contended that any method of sifting facts after the event was of limited value because of the high burden of proof required in such cases. When a person made a serious allegation against any official, a review by any examining body or process would only be sustained in a minority of cases but the norm would revolve around lack of witnesses and corroboration. The author argued that often the complainant was arrested or was unable to identify an officer - a position which becomes even more difficult in public order situations. Very few police abuses are going to be punished (*ibid*, p270).

The reasons for these difficulties lie in the fact that police discipline is a social problem, where the police ethic is to eliminate those who threaten authority and convict the guilty in any way they can. In this way there is a compromise between due process and law enforcement.

Chevigny also suggested that the limitations of review could be alleviated when recommendations are made not necessarily to punish individual police officers but to change procedures, processes and regulations. This, he noted, had already occurred when recommendations were made to the police organisation by the (Ombudsman) or Civilian Review Board. Furthermore there was a need to identify departmental processes which reduced systematic abuse such as minor harassment arrests. These were the arrests which occurred when citizens aggravated the police. He suggested that the reasons for low level police abuses rested with the culture of the precinct; when young officers came into contact with older officers.

This publication highlighted the rift that existed between the police and the policed. The strong bonds of loyalty and solidarity within the hierarchical (rank) structure of policing existed both vertically and horizontally. Chevigny showed that denial and discrediting factors ensured that complaints against police and redress by citizens against police abuses were blamed, not on the police, but on the citizen himself.

It highlighted American anxiety over low level police deviant behaviour rather than an expose of major scandals, corruption or murder. In short the research centred on the police abuse of power by denial of due process, false arrest and illegal search etc. directed at public citizens. Chevigny attempted to find out what went wrong with law enforcement and the reasons for it. The changing nature of politics and law and order clearly showed the police as not necessarily fulfilling the requirements and perceptions the public have of them. Malpractice, which was acceptable before, was no longer welcomed and Chevigny helped to uncover secret abuses of power and wrong-doing employed by the New York police in order to get the job done.

Chevigny took the view that;

“Many police abuses are themselves crimes; for example, police brutality usually constitutes a simple assault; if severe enough, it may be a felonious assault. Theoretically, prosecution by the District Attorney is a possible remedy, but as a practical matter, unless corruption or killing is involved, the District Attorney does not often prosecute policemen. For the most part, discipline is left to the Police Department”. (op cit xvii).

Chevigny suggested that police brutality was a major social problem. He contended that the problem was a strange one because the people involved with it; law enforcement officials, citizens and police officers alike, all denied it existed. This meant that the author needed to establish primarily that there was a problem in the first place and then to discuss the means to address it.

The patterning of complaints about police violence soon concentrated on discrediting factors because as the author pointed out;

“Judges find articulate well dressed people without criminal records credible as witnesses and disposed to believe their testimony if it is they who are defendants or defence witnesses. But once a man has one criminal conviction, it becomes much easier to get another; conversely, when his record is clean, the courts are more inclined to let it remain that way”(ibid, pxvii).

Therefore the author had to combat aggravating factors from the very beginning, such as arrest - which in itself was a very powerful tool. Only evidence from independent witnesses who were credible and convincing, would detract from the aggravating factors, only under those circumstances would it result in an acquittal.

Chevigny considered the motivation for police abuses of power and contended that open, blatant and individual defiance or perceived police defiance would result in a police use of force and arrest (*ibid.* p29). This research related to the US; it still stands as the first comprehensive critical understanding of police deviance and misconduct.

Soon the issue of police misconduct became a matter of particular concern in the UK. Further abuses and misconduct were highlighted in the UK by Ken Russell whose research contributed to the debate on police malpractice.

#### COMPLAINTS AGAINST THE POLICE

Russell's (1976) study entitled Complaints against the Police<sup>1</sup> still stands today as perhaps the first and most comprehensive sociological account of complaints against the police of England and Wales. It provides a powerful insight into the phenomenon of public dissatisfaction with police misconduct and behaviour. Russell found that sociologists were excluded or often shied away from the debate on complaints. This led him to conclude that matters being discussed by the Royal Commission on Policing at the time were likely to be seriously flawed because the proposals failed to help solve problems, remedy deficiencies, weaknesses and biases which sociological research might reveal.

The original research design involved the analysis of complaints filed and interviews with complainants, officers in receipt of complaints and investigating officers. The author also used comparisons of data drawn from analysis obtained from an American City Force. The findings were considered against a model of interaction using five stages taken from the original citizen encounter to the final stage when a complaint was either substantiated or unsubstantiated. The research methodology considered:

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<sup>1</sup> Russell reprinted and updated this publication on several occasions reworking some of the conclusions in the 1994 version.

- 1) those police-public encounters which resulted in citizens believing they had grounds for complaining;
- 2) factors associated with the decision to complain;
- 3) the social dynamics of recording the complaint;
- 4) the reasons underlying decisions to withdraw complaints; and
- 5) the social processes constituting the investigation and adjudication of a complaint.

Russell was able to demystify the reality of the complaints process to the outsider. This was achieved by explaining the recording and disposal practice of complaints and delving into organisational, cultural and individual explanations and constraints. For the first time the issue of confidentiality, demographics, age, sex, marital status and social standing were considered. The study also focused on how complaints were disposed of or withdrawn and what was left after this process. It reported the low substantiation rates of police complaints and explained how and why this was so. Russell was able to employ an outsider perspective to highlight the many difficulties and problems complainants face when making a complaint.

#### WHY PEOPLE DISCONTINUE COMPLAINTS.

Russell considered the variety of reasons why people filed a complaint against the police. There were four main incentives why complainants discontinued their complaints.

- i) they were too disturbed to present a coherent account;
- ii) discovery they were not being prosecuted;
- iii) the willingness to pursue their complaint once they had been successfully prosecuted.
- iv) having initiated their complaint whilst in prison, they had eventually exhausted their resources.

#### DENIAL OF COMPLAINTS.

Perhaps Russell's most important discovery was the extent to which police managers go to deny allegations or complaints. This was done using a series of tactics aimed at the disposal of (legitimate) complaints by employing a scale of public discreditability. They include evidence concerning :

- i) Arrest of complainant
- ii) Prosecution of complainant,

- iii) Previous convictions
- iv) Mental illness
- v) Drunkenness
- vi) Race and ethnicity
- vii) Deviancy (Drug addicts/abusers, homosexuals, squatters, hippies, Gypsies, New Age Travellers, students, prostitutes, political demonstrators etc.)

Russell elaborated the reputable/disreputable dichotomy, which he showed significantly contributed to the low substantiation rate of complaints. Based on these principles of character the author illustrated the virtual impossibility of proving a case against police. Furthermore the principles and conceptions of English law, where the accused is considered innocent until proven guilty, also acted as a barrier against the potential complainant. The practicalities of obtaining evidence which exceeded the traditional legal standard of “beyond all reasonable doubt”, he argued, was an impossibility, especially if independent witnesses or other evidence could not be found. Yet Russell argued that complaints threaten the police occupational and organisational interests, so they responded by using discrediting factors as a means of justifying their actions to themselves and outsiders.(*ibid*, p76)

By seeking to explain the mechanisms of complaints he was able to make clear the wider structural and symbolic contexts shaping their behaviour. He argued that such mechanisms highlighted discredibility against the complainant rather than a sense of belief making for action which was both philosophically and methodologically problematic (*Ibid*, p77). Therefore, police managers should not have been surprised that working class rather than middle class complaints featured higher on the index of discredibility.

Almost all research up to this time had ignored the views and experiences of complainants who had used the police complaints system. However by the early 1980's issues around police accountability, dissatisfaction and victimisation meant that their views were heard. It is to the lived realities or empiricism of complainants that I now wish to turn.

#### WHAT COMPLAINANTS SAY

In 1987 David Brown published The Police Complaints Procedure-A Study of Complainants Views which was Home Office Research Study No.93. In this research Brown attempted to establish a balanced view of citizen

complaints where, on the one hand, the accused police officer would be protected from unfair and malicious complaints, whilst on the other complaints procedures satisfied the complainant.

The report indicated that safeguards against malicious allegations were pitched too high and this prevented complaints being substantiated. The author raised the concern that the disciplinary system was overshadowed by the need to satisfy the complainant (Scarman 1981; HAC 1982b; Hewitt 1982). Furthermore, evidence indicated that the high standard of proof and conflicts of evidence ensured complaints were seldom upheld (Box and Russell, 1975).

#### DISSUASION, DISCOURAGEMENT AND NON RECORDING.

A systematic sample of complainants were selected from two force areas. A disproportionate number of substantiated complaints had been selected to compensate for the fact that normally only about 7% were substantiated.

The main findings of the research were that;

“some 60% of respondents reported overall dissatisfaction with the procedure, 20% had mixed feelings and less than 20% were satisfied. The most satisfied were those who withdrew their complaints” (*ibid*, p37).

The overall experience regarding the process left people with a negative feeling. The low response rate may have meant that there was a bias towards dissatisfaction amongst those who were questioned. A sample of complainants were approached only 30% of those questioned agreed to take part. This indicated the level of dissatisfaction felt by complainants. Nearly all those who were content with the outcome of complaining felt that they had at least achieved some of their objectives. Those who just wanted to blow off steam were the most satisfied, although less than half who had wanted the officer disciplined and only a third who had expected an apology or explanation were content.

Brown specifically considered the issue of police treatment of complainants from an outsider's perspective. He was able to establish that well over half of complainants were satisfied with police action but over a third criticised the police at each stage of the procedure for their attitude and for discouraging them. Nearly two thirds of the sample were dissatisfied because they felt it was wrong in principle for the police to investigate themselves. Some 35%



felt that the involvement of the DPP and the Police Complaints Board provided inadequate reassurance that the system operated fairly.

Over a quarter found the system to be over long and lacking in feedback and about a third feared harassment by police as a consequence of complaining. The most common reasons for withdrawing complaints were that they accepted informal settlement or that they were dissatisfied with the length, formality and complexity of the procedure. Some complainants withdrew their complaints at a late stage when they had calmed down, realised that there was little chance of substantiating the complaint or following persuasion to withdraw allegations by the investigating officer. Some 60% of respondents perceived some form of discouragement which usually occurred either at the time of registering the complaint or at some time during the investigation. The author on the one hand expected a certain level of dissuasion where, for example, the chances of substantiation were low, or an apology or explanation were offered in less serious cases. On the other hand, discouragement may sometimes have been improper, where for example the police overstated the consequences of complaints for accused officers or dwelt on the complexity and formality of the procedures. Those who reported that the police had attempted to persuade them to withdraw were more likely to withdraw than those who had received no such discouragement, and complainants' reasons for withdrawing often corresponded closely to the forms of discouragement they reported. (ibid, p38)

Brown highlighted five areas worthy of further consideration and reflection. These were as follows;

#### **1. INFORMAL RESOLUTION.**

The author felt that satisfying the complainant was the most appropriate reaction for police, especially in respect of providing a response which matched the nature and seriousness of the allegation. It was felt that sympathetic handling of complaints would certainly help informal resolution in matters of a minor, less serious nature.

#### **2. POLICE INVESTIGATING THEMSELVES.**

The issue of a separate investigation system was discussed within the report. An independent handling and investigation system had been proposed as a panacea to criticisms associated with police investigating themselves. Nearly half of the respondents expressed dissatisfaction over the fact that investigators encouraged complainants to withdraw their complaints. An independent element might reduce the pressure on complainants to

withdraw. Informal resolution, rather than withdrawal may actually increase satisfaction over a system without independent investigation. The fact that police were involved in the investigative action from time to time, raised the issue of police bias, a factor which was often entwined within the process. The opportunity at various stages to discourage complainants was clearly an element of an imperfect system.

### **3. TRAINING**

The training of police officers at two particular stages in the complaints mechanism was suggested by the author. Firstly the handling of people in sensitive situations at street level and secondly the reception of complainants at the front counter required additional training. Brown suggested that training which counteracted prejudice, increased self awareness and improved social skills would clearly be of benefit. Such action the author concluded would lead to fewer complaints.

### **4. PREVENTING POLICE MISCONDUCT.**

One of the main reasons respondents chose to complain revolved around the issue of future prevention of such behaviour (over 40%). Whilst the issue of training was discussed, prevention of misconduct occurred through enforcing disciplinary mechanisms in order to deter potential bad behaviour by police officers. The imposing of severe punishments in proven cases would cause potential wrongdoers to think again before taking such action. The facts concerning withdrawn or informally resolved cases would be collated and used as management information in a proactive way. The implementation of systems designed to reduced police misconduct would produce a more co-ordinated and systematic approach to effective complaints management.

### **5. REDUCING DELAY AND IMPROVING COMMUNICATIONS**

The issue of delay appeared to be a particularly difficult problem. It was suggested that the employment of more resources either in terms of increased police officers and investigators or additional funding was the answer. Perhaps the increased use of 'Complaint Investigation Pools' where good practice, experience and expertise could be shared would reduce time limits. The consideration of criminal and disciplinary action further lengthened complaint enquiries. For example the DPP., the Deputy Chief

Constable and the PCA all had responsibility for determining further action and often this delayed an enquiry significantly.

The issue of communications during and after investigation was an acute problem. Some 15% were critical of the DPP and nearly 20% of the PCB. Evidence showed that when the PCB agreed with the police decision to take no further action there was an unintentional effect of implied agreement that the Board appeared to favour the police account. The complainant may also have misunderstood the fact that the PCB could only question the decisions regarding disciplinary action and was not able to question the facts of the case. There appeared to be no suitable and immediate resolution to this particular dilemma.

This study was one sided and failed to represent properly the officer who faces the realities and dangers of policing. The experience of the criminal justice system caused some people who felt aggrieved and powerless against such a large organisation, to make a complaint against the police. The police perceived that a complainant would often make a complaint as a strategy against police officers. The police have referred to these as strategic or malicious complaints, frequently relegating their importance to a cursory investigation. This relegation involved the question of discredibility cited by Russell (1994), on how vigorously to investigate a matter, especially when the complainant had a serious criminal record. To police such complaints inconvenience, divert and waste valuable resources. One must not expect affection from the public to those whose duty it is to enforce the law.

The original objective of a balanced system cannot be assessed without canvassing the views of street level officers, although speaking to some of those who had been the subject of police discipline may be insightful. The results of Brown's research indicate some interesting factors which assist the observer in helping to understand the nature, complexity and processes of police complaints system.

#### STUDYING THE POLICE COMPLAINTS SYSTEM

Building on the work of both Russell (1975) and Brown (1987) Maguire and Corbett conducted research for the Home Office in 1991 and reported their findings in A Study of the Police Complaints System.

The research was funded by the Home Office by way of a grant to the PCA. The authors were given data gathered pre and post implementation of the

Police and Criminal Evidence Act 1984 (PACE) in order to compare and evaluate the effects of the legislation in terms of complaints.

The purpose of the review was twofold;

Firstly to study the patterns of complaints and consider the views of complainant, police officers complained against and investigating officers.

Secondly to part focus on the work of PCA members and their supervisory role in investigating serious complaints.

The general idea was to show a comparative study on the workings of the complaints process before and after PACE was introduced.

Maguire and Corbett were granted access to three police forces in order to implement the study. The analysis produced a three part report.

- Part 1 focused on the current complaints process, trends and variations between forces. The authors contextualised recent complaints, history and research background, which was followed by a portrayal of the basic rules and practices embodied within the complaints process, from initial recording to review by the DPP. This was followed by an elaboration of patterns relating to complaints statistics.
- Part 2 gave an account of the main findings of the report together with the views of complainants, police officers and investigators.
- Part 3 focused entirely on the PCA. The authors considered issues of public confidence, public and police (accused officers and investigators) perceptions, substantiation, complaints data and the use to which such information was put.

#### CONFIDENCE IN THE SYSTEM - POLICE/INSIDER PERCEPTIONS.

Certainly in terms of enthusiasm and commitment the report found that both investigating officers and members of the PCA were dedicated and committed to the investigation and processing of complaints against police. The authors also reported that in their opinion informal resolution of complaints was a success and considered a positive element to complaints resolution.

## CONFIDENCE IN THE SYSTEM OUTSIDE PERCEPTIONS.

The authors primarily concerned themselves with the reasons why people decided to make a complaint in the first instance and what their intended outcomes were likely to be. They found evidence based on 100 interviews. There were a number of elements motivating the complainant from anger, justice, to prove the truth, to make a point (17%) formal discipline (24%) to educate the officer/ tick him off/stop repetition (27%), for compensation (7%) to stimulate police action/ get charges dropped (5%) (*op.cit.* p57). Evidence from a postal questionnaire of 186 complainants who had their complaints fully investigated, some 141 alleging assault, gave the following as their primary objective; to stop it happening to someone else (22%), to have the officer punished (30%) to prove what they were saying was true (28%), to express just how upset they were (5%) to obtain an apology (6%) to obtain financial compensation (4%) to persuade the police to drop charges against them (2%); other (1%) (*op.cit.* p167). Maguire and Corbett also found that the prime motivation for punishment was not significantly higher in assault cases than in other complaint allegations. (*op.cit.* p57). On those matters supervised by the PCA where the allegation of assault had been made, about three quarters recommended that the accused officer should be punished. The authors justified this by suggesting that these were the more serious matters, with more severe injuries implying a greater level of visible proof and substantiation.

The authors found overwhelming levels of dissatisfaction with the process. Complainants suggested that the process was too bureaucratic, too secretive and suffered with overlong investigations. They found a high level of public ignorance with regard to external review and misunderstandings which amounted to a small minority of people being satisfied with the system.

## COMPLAINTS INFORMATION AND DATA.

Maguire and Corbett (1991) found a three-tiered complaints system. Investigations into the most serious cases were supervised by outsiders. Medium serious complaints continue to be investigated in the traditional manner (with the addition of external scrutiny at the final report stage and minor complaints were increasingly dealt with informally. These were based on a sliding scale of seriousness where minor complaints still remained

unsupervised. They considered it more a system of prevention rather than a disciplinary process.

They found that the characteristics of the complainants varied significantly depending on the type of complaint made. (Ibid, p42) Assault complaints formed the substantial part of all complaints made with only 1% being substantiated. In respect of other complaints the trend of low substantiation rates continued with 99% of all complaints being not substantiated (32%) withdrawn, not proceeded (60%) and informally resolved (7%)(ibid, p37).

In the following section I plot the course, within an organisational context, and critically assess the issue of external or independent overview of complaints against police.

#### FAILING THEIR WAY TO SUCCESS

In the UK the manner in which the police performed their duties were examined by the 1962 Royal Commission on the Police who gathered evidence on all aspects of policing. In respect of complaints made against police and alleged excesses of duty they reported in the following terms:

‘In 68% of the complaints, the police were alleged to have exceeded their duty in some way. The total of 68% was made up of complaints of incivility (28%) excessive use of police powers (25%) actual physical violence or assault (15%). In most of the remaining 32% of complaints the police were said to have fallen short of their duty, for instance by failing to give help to motorists in trouble, or by delay in arriving at the scene of a crime or accident. A small proportion of complaints (about 5%) concerned alleged dishonesty, corruption or perjury. (The Royal Commission on the Police, 1962, p123).

The police have always investigated themselves and there is a fear that cases will be covered up or not explored or not investigated vigorously enough. To counter these assertions many observers have called for an independent element to complaints in order to improve public confidence and satisfaction in the process.

When the Police Act 1964 was introduced it was hailed as a major success not only from the various interested parties but also by the police themselves. The legislation confirmed a new phase in the parliamentary relationship with the police because it asserted firmer central control which ensured reviews of policing when concern and frustration attracted criticism. This meant the Home Secretary was now duty bound to answer questions in Parliament

regarding policing in general and not purely on matters concerning the Metropolitan Police of which he was the Police Authority<sup>2</sup>.

The new Act formalised what the Editor of The Police Journal at the time referred to as “the odious term *complaints against police*” (Editorial Sept. 1964, p413). The legislation defined responsibilities, practices and processes in respect of civilian complaints. This was achieved by ending the traditional, time-honoured, preserve of “police discipline” in favour of a code of punishments. The new sub-title in the Act “Remedies and Complaints Against Police”, made Chief Officers liable for the civil wrongs of their officers and also placed an obligation on the police to record and investigate complaints by members of the public. Her Majesty’s Inspectors of Constabulary (HMIC) were also required to keep themselves informed as to the manner in which complaints from members of the public were dealt with by Chief Officers.

The Royal Commission had gathered a substantial amount of evidence in support of the independent element in respect of complaints overview. However the Government chose to ignore those recommendation in the final legislation; a grave mistake. The independent element to civilian complaints rankled with some senior police officers, however to others this intrusion was of minor concern merely having to send some complaints matters to an external solicitor or barrister for review and confirmation. Nonetheless, the Government of the day chose to listen to the powerful police voice on this issue, as explained in 1969 by the Chief Constable of Mid-Anglia Mr. Drayton Porter, the adviser to the Association of Municipal Corporations on Police Affairs. He reasoned that under Section 50 of the Police Act 1964 the lay element in respect of police discipline was already present, and that there was no need to duplicate the process. He stated that;

“Members of the Police Authority scrutinise complaints which are summarised and reported at their meetings (at which the press are present). Section 11 of the Act further safeguards the public by providing that the police authority itself may be questioned by other members of the council regarding the discharge of its functions”.(Police Journal, Oct.1969, p427)

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<sup>2</sup>In the case of the Metropolitan Police a bi-partite relationship existed where the Home Secretary also carried out the functions of the Police Authority. Traditionally the special status of London in terms of civil disturbance, royalty protection and diplomatic importance rendered it essential for the Home Secretary to maintain a greater control of affairs.

The powerful police lobby also managed to persuade the government that there was no public will for change in existing procedures and argued that there was a small minority of influential, vocal and vociferous people who were orchestrating the change (Ibid, p427). Hindsight has shown that in times of crisis the lay element suggested by the Chief Constable of Mid Anglia did not work sufficiently well to satisfy the public. The call for powerful external civilian overview of police behaviour was soon being expressed.

The public remained dissatisfied after the new Police Act 1964, where the issue of complaints had not been properly addressed; a factor which soon required a new Police Act (1976) to stem the concerns. The Police Act 1976 introduced the independent Police Complaints Board (PCB) which reviewed investigating officers reports. They were dogged, however, with criticism that they were seen as entirely establishment in character and lacking in investigative powers (Reiner, 1997, p1028). This period marked an increase in the politicisation of policing on the one hand and shifted police accountability and control from local to central responsibility on the other.

Lord Scarman voiced his concerns about public confidence when he referred to the independent investigation of public complaints in his report of the Brixton disturbances. He wrote;

'My own view is that if public confidence in the complaints procedure is to be achieved any system falling short of a system of independent investigation available for all complaints (other than the frivolous) which are not withdrawn, is unlikely to be successful' (1982, p182-3)

To 'counterbalance' external criticism the Police and Criminal Evidence Act (PACE) contained new legislation on complaints against police in tightly defined sections, paragraphs and legal phrases through a Code of Practice (Section 66) in order that there should be no doubt as to the meaning of the legislation. This was also followed by the issue of a comprehensive policy document entitled "The Home Office Guidance to Chief Officers" (1985) so that Senior Police Officers, whose job it was to oversee the new complaints procedure, were constrained to ensure their own individual accountability in the decision making process. PACE had repealed the police disciplinary procedures originally framed under the Police Act 1964 and the Police Act 1976 placing a responsibility on those who administer the police discipline system under Section 105 of PACE, to ensure that all guidance issued by the Secretary of State was properly promulgated and carried out. The duty placed on senior officers to administer the legislation meant that discretion



was to be used sparingly. For this reason the Home Office Guidance to Chief Officers reminded them that;

'this guidance is issued under statutory authority.... and in discharging their responsibilities they are required to take its provisions (Sec 105 PACE) fully into account (and) should not be departed from without good reason. (Home Office Guidance to Chief Officers, 1985, para. 9.1 p44)

The Police Regulations which originally appeared in the 1964 Act were redefined under PACE and the Police Act 1996, to form the new complaints procedure. For example under PACE, 'racially motivated behaviour', was included for the first time in the police disciplinary code. A more adequate and precise definition of what constituted a complaint was also created within the legislation. PACE ensured that the PCA were given a more independent element of supervision than their predecessors the Police Complaints Board (PCB), especially for those more serious complaints or incidents. This independent role was crucial in establishing greater confidence in the police. As Goldsmith put it:

'Related to issues of community politics and democratic control are the problems of legitimacy of the police institution itself and the potential role of complaints mechanisms established at least partially independently of the police, in helping to restore public confidence in what periodically appears to many in the community to be a largely unaccountable organisation'.(Goldsmith, 1991, p3)

The introduction of PACE in 1985 created an element of independence in investigations and further expanded civilian independent review when the Police Complaints Authority (PCA) were created to replace the Police Complaints Board (PCB). However a more radical independent review system had been proposed from within the police service in 1981 by the Police Federation who supported the idea of a complaints system which was run by a totally independent civilian body (Reiner 1997, p1028). This was a view shared by an unlikely bed fellow - the Law Society. The Police Federation and The Law Society had always been at odds on this issue and a change in position by the Police Federation only really brought them into line with what was widespread common orthodoxy. This was a complex issue and getting the balance right was essential because differences in semantics, perceptions and political bias meant different interested bodies placed their own meaning on the phraseology.

In effect the crisis of confidence in the police rumbled on through the 1980's and the 1990's. As the 1990's started, widespread concerns were being expressed at various levels within the police regarding complaints. For

example the complaints system was pinpointed in The Independent dated 22.5.90 as contributing to the "Major Part of the Crisis in Policing". The article reported an interview with Alan Eastwood of the Police Federation. It explained that the old system of complaints contributed to the continuing lack of public confidence and legitimacy in the police. Many critics have cited the total civilianisation of police discipline and complaints as the panacea to public satisfaction and confidence. These systems are referred to as Civilian Review Boards (CRB's) and Andrew Goldsmith contends that;

'the CRBs (Civilian Review Boards) have generally been regarded as inadequate in terms of independence of investigations, their focus on individual grievances, their emphasis on penalties and their lack of credibility with both police and public. In addition police objections to CRB's and similar bodies can face legitimacy problems with the general pro-police public'. (1991, p37)

The current opinion in this country on civilian review seems to fall short of other jurisdictions - notably in Canada who favour investigating, hearing the evidence and punishing police officers. The move towards this model of review is tempered to include control of the investigation, considering the evidence and making recommendations probably because of the bad experience<sup>3</sup> which some jurisdictions, particularly in Australia, have had with this distinctive model.

The investigation of complaints against the police has often been the subject of comment by the Home Affairs Select Committee who maintain an overview of the mechanisms of complaint. Thus the Committee asked a representative from the external ombudsman, the PCA, about partiality and said:

(Ms Hughes). Q. 'We have heard other evidence from witnesses to suggest on occasions an investigating officer appointed to a complaint undertakes a less than full enquiry or does not interview a colleague police officer as vigorously as they feel ought to have taken place. What is your experience....?'

(Mr. Cartwright). A. 'The extent to which sometimes complaints which do not appear to have not much going for them are thoroughly investigated and the extent to which the investigation goes into seeking witnesses, house to house investigations and things of that sort, was a very considerable surprise to me when I first joined the authority'. (Home Affairs Select Committee, 1997, p52-53)

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<sup>3</sup> In Australia the introduction of a CRB which also controlled the punishment of errant police officers caused the powerful police lobby successfully to apply pressure on the Government to remove it.

From this response the PCA appeared confident about the quality of complaints investigations undertaken by police. They were able to monitor, apprise themselves on the progress of a complaint and direct a complaint investigation. This means that a copy of an investigators report of the inquiry was forwarded to them, because as an outside body they were required by law to regulate the investigation of complaints. When the PCA receive a file they review the case papers and may comment on the sufficiency of the investigation, give directions on how to proceed further, or decide on what action may be taken against accused officers. This ensures an external over-view of some, but not all complaints investigations and goes some way towards ensuring a level of quality control of police investigations which is designed to help contribute towards the issue of police accountability. This said, Maguire and Corbett's (1991) study of police complaints in Britain generally concluded that complainants whose complaints were supervised by the PCA were slightly happier with the outcome than in unsupervised cases. Yet satisfaction and confidence in the complaints process seems uncomfortably low (Maguire and Corbett, 1991, p161).

It is worth re-emphasising that the PCA (and the Police Complaints Board before them) were generally satisfied with the levels of investigations by the police into complaints made against them describing them in 1993 as impartial, efficient and thorough<sup>4</sup>. The issue of who investigates police complaints was recently reviewed by the Home Secretary, the Rt. Hon. Jack Straw MP. Some commentators have argued that, certainly in theory, it seemed far more practical for police to regulate themselves (Bayley, 1983; Goldstein, 1967; Goldsmith, 1991), and as far as practitioners and insiders were concerned their view was that the expertise and knowledge for investigation of crime lays with police, and for that very reason they should maintain the control and investigation of public complaints. Critics of this view argued that it is precisely for this reason that police criminality and misdemeanours occur. Furthermore, an internal investigation section like those employed in England and Wales, is a good indicator of the police inability to act objectively, impartially and effectively when investigating complaints against each other without external independent supervision (Goldsmith, 1991).

The common thread running through the decades was the dissatisfaction with the system of complaints against the police. This has led to the implementation of regulating legislation to correct the problem, yet had the

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<sup>4</sup> For more details on the sufficiency of complaints investigations by police see the 1993 PCA Annual Report.

Government not ignored civil libertarian concerns in favour of the police lobby in respect of a proposed independent element in 1962, the need for further legislation in 1976 may not have been necessary. Jefferson and Grimshaw were very perceptive when they considered complaints in their publication entitled "Controlling the Constable" by suggesting that this subject would remain an important issue for some considerable time. They concluded that;

"Dissatisfaction with one feature of the 1964 Act, the provisions for dealing with complaints has already led to the new Police Act (1976) which establishes the Police Complaints Board, among other arrangements to the procedure for handling complaints against police. Since the latest Government proposals in this area contained in the Police and Criminal Evidence Bill opt for very limited concession of making only serious investigations subject to independent supervision and reject the widely supported idea to independent, non police investigators the question of complaints looks to be on the agenda for some time to come yet" (1984, p2-3).

In this section we have considered the organisational context of complaints. However I would now like to turn to the legal considerations.

#### DEFINING A COMPLAINT

What is a complaint against the police? Put simply, this means citizen dissatisfaction in police action, behaviour or a process. Complaints can not be made against Police Forces for the way they police an event or run their force. From time to time the various definitions regarding complaints are made more sophisticated, are modified or simply brought up to date. Originally the definition under the Police Act 1964, section 49 contained instructions for dealing with complaints rather than actually defining what a complaint was. The Police Act 1976 retained the original definition whilst it was Section 84 of PACE, which defined a complaint as;

' any complaint made about the conduct of any police officer which is submitted by a member of the public, or on behalf of the member of the public and with his written consent'. (The Police and Criminal Evidence Act, 1984, Section 84).

Although this section of PACE was repealed in 1996 the definition stayed the same except that it is now recorded under section 65 Police Act 1996. The Police regulations issued in 1999 <sup>5</sup> also retained the same definition under section 65 of the Police Act 1996.

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<sup>5</sup> There were 4 sets of Statutory Instruments which were issued as regulations in 1999

## WHY IS THE SYSTEM FAILING - PUBLIC APATHY OR FEAR?

The mechanics of making a complaint has remained unchanged since the introduction of the Police Act 1964. For a short time this system seemed to satisfy public concerns although by the late 1960's the effectiveness of the process was brought into question.

For the complainant, making a complaint is a daunting and frightening step to take. This is summed up well by Maguire and Corbett who argued that;

“Many people who complain, often for the first time in their lives are genuine in the belief that they have been wronged and do not take this course lightly. Their intensity of feeling, whether justifiable or not, remains with them as a lasting sense of grievance about what has happened” (1991, p55)

The definition of a complaint has been explained, however what of the reality of making a one, its mechanics and where does one need to begin? If you wish to make a successful recorded complaint against the police it requires skill, patience and plenty of resilience. The dissatisfaction needs to be communicated in some form and this is where the problems start. One of the fundamental difficulties associated with complaints is that one can only report the matter to the police because they are the only body statutorily responsible for recording and reporting public complaints. There are a number of ways in which to lodge a formal complaint and these are highlighted below.

- i) One can put into writing the nature of the complaint and send it to the officer in charge of the police station or Force to which the complained against officer is attached.
- ii) One can also write to the Police Complaints Authority who will forward the letter on to the Police Force concerned.
- iii) One can telephone a complaint to the station concerned.
- iv) One can go personally to the station.

In the case of i) and ii) this will attract the attention of a Senior Officer who will arrange for a supervisory officer, usually an Inspector, to see the complainant. The formal recording of a complaint against police may be completed by the officer when he/she attends the place where the

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relating to Police discipline. These were the Police (Efficiency) Regs, the Police (Conduct) Regs, The Police Appeals Tribunal Rules and the Police (Conduct) (Senior Officers) Regs.

complainant is made. In the case of iii) potential complainants are usually told that they need to make their complaint in person at a police station. In the case of iv) very often an officer of supervisory rank is not available or is perhaps elsewhere dealing with another matter, but will contact the complainant later.

There is no statutory requirement for a police officer to record formally details from a complainant and any action to remedy the situation is reliant on the use of discretion. The statutory obligation to record a complaint exists at Chief Officer level under Sec 85 of PACE and charges the 'Appropriate Authority' in relation to a complaint, "should record the complaint as soon as possible after it has been received" (3.7 Home Office Guidance to Chief Officers and Sec 85 PACE). The Appropriate Authority is the Chief Officer of the Force concerned and he can only complete his task providing he has properly been informed of the details of a complaint by a subordinate officer. The issuing of policy with respect to complaints can reduce the numbers of people complaining and clearly this secret area holds subordinate officers responsible for keeping the figures down. Care has been taken when compiling legislation especially in the wording which allows a certain amount of flexibility, latitude and discretion in interpretation, otherwise the term 'must' would have been substituted for 'should'.

#### THE POLICE COMPLAINTS AUTHORITY.

Review of alleged police misconduct has historically been either internal or external to the police. External review means civilian oversight. However, both internal and civilian oversight have their own individual definitions which can be further sub-divided to produce different organisations of complaints review. For example, internal in this case means either review by persons inside the police or inside the Government. By contrast, civilian review means oversight of complaints by an outside organisation of non-police officers, who may or may not possess certain powers to direct and control police decision making in respect of complaints. Civilian representatives may either be appointed by the State or elected by the people to serve on the review boards. In the case of England and Wales, members of the PCA are appointed by the Home Office and are therefore located within the Government but outside the police, seeming to act independently of both. The PCA is viewed as an Ombudsman with apparently considerable powers to influence, control and direct the police in matters of complaints.

The International Bar Association in 1974 defined the term Ombudsman as:

The office provided for by the constitution or by action of the legislature or parliament, and headed by an independent, high level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against Government agencies, officials, and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports'. (Caiden, MacDermot and Sandler, 1981 p12)

According to Goldsmith the role of ombudsman must have the following ten characteristics which are seen as being essential. They are:

'legally established, functionally autonomous, external to the administration, operationally independent of both the legislature and the executive, specialist, expert, non-partisan, normatively universalisation, client centred but not anti-administrative, and both popularly accessible and visible'. (Goldsmith, 1991, p38)

The PCA appear to conform to most, if not all of the characteristics highlighted above, although some critics have argued that they are not client centred, popularly accessible or visible. The fact that all complaints are investigated by other police officers has been an important factor which has helped to explain, in part, the reason why so few complaints are made compared to the proportion of public expressing dissatisfaction (Skogan, 1994). A further criticism has also been the fact that whilst the PCA publicly announce investigations in seemingly high profile cases, these have often taken several years to investigate and have resulted in several lines in their Annual Report, rather than a published, detailed individual reports (Uglow, 1988, p135). The secret and often clandestine methods employed by the PCA do little to enhance public confidence because justice must not only be done, but it must also be seen to be done within the quasi-judicial complaints mechanism. Whilst deadlines have been introduced, these investigations have often been often lost in time and public attention has moved onto something else. The PCA are restricted in their public criticism of policing especially with regard to policing strategy, tactics, and organisation. Any criticism necessary is done behind closed doors in private at "suite level" (as Reiner calls it), attracting little attention or fall-out.

The Chairman of the Authority has traditionally been selected by the Home Secretary and appointed by the Queen. None of the members are selected regionally by any of the recently re-constituted Police Authorities nor by civilian members of any County or Metropolitan Council. They are financially accountable to the Secretary of State who entirely funds the PCA through a process referred to as Grant in Aid. Furthermore as an ombudsman the PCA, like the police themselves, are affected by Home Office policy, which is not generally published and therefore may not be entirely

independent of the executive arm of the state. The effectiveness of the PCA has been severely hampered over recent years by financial cutbacks, increased workloads and lack of suitable information technology.

#### THE ROLE AND RESPONSIBILITIES OF THE PCA.

The responsibility for supervision of all recorded and serious complaints in England and Wales, rests with the (Independent)<sup>6</sup> Police Complaints Authority. They consist of a body of people from professional backgrounds who are appointed by the Home Office, usually after open national competition. The PCA has three functions;

- 1) To supervise the investigation of the most serious complaints against police officers,
- 2) To supervise investigations into non-complaint matters voluntarily referred to them by police forces because of their potential gravity,
- 3) To review the outcome of every investigation whether supervised or not, and to decide whether disciplinary action should be taken against any officer.

The PCA must also report annually to the Home Secretary and ensure that the report is made public. They do not deal with or supervise internal police investigations unless these are referred to them by the Chief Officers. In England and Wales the PCA are a national unit based in London, although they have the powers, should they see fit to establish PCA offices in various parts of the country. As mentioned previously they are external and independent of the police and of government although their administrative staff are drawn from the Civil Service. There is no democratic election to the PCA. The PCA possess no investigation unit and rely entirely on police, not only in terms of gathering evidence for any complaint but also to fund those enquiries themselves, although often the police may feel this is a waste of time.

The PCA are required to supervise complaints made against the forty three Home Office Police Forces, the British Transport Police, the Ministry of Defence Police, the Port of Liverpool Police, the Port of Tilbury Police, the

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<sup>6</sup>The term independent was added to the title to show the PCA as a separate entity to the police amid mounting criticism that they were part of the police, although under PACE the Police Complaints Authority is its proper title which can only change by statutory instrument.



Royal Parks Police and the United Kingdom Atomic Energy Authority. For the year 1996-7 they supervised 19,953 cases and decided the final action in all these matters. This model represents a national uniform decision making body with significant powers independently of police forces to make judgements regarding the behaviour of the police of England and Wales.

The relationship between the PCB and latterly the PCA, with Chief Officers has often been antagonistic because in the beginning it threatened their autonomy to manage complaints and discipline, however gradually over the years there has been more co-operation between the two. It is not often that inside views regarding complaints and discipline can be obtained because these matters are largely governed by secrecy, privacy of the individual and legal notions of sub-judice. However Robert Reiner interviewed nearly all the Chief Constables of England and Wales between 1987/8; a most crucial time bearing in mind the new financial constraints and managerial re-casting. The introduction of PACE brought in a more extreme form of independent civilian review. He found that:

'70% of Chief Officers saw no problem with the current system whilst 30% raised a variety of issues which they regarded as problematic. Despite this vote of confidence 52% rejected the idea of a completely independent system with 18% being undecided having arguments either way. Nearly a third 30% supported a completely independent system' (1991, p287).

Not all complaints are supervised or considered by the PCA. They have a statutory role of supervising complaints against police, particularly those considered more serious. Less serious matters remain unsupervised and can be discontinued or withdrawn prior to completion for a number of reasons. For example any failure by a complainant to respond to correspondence from the Investigating officer are grounds for discontinuance. Police investigators work under the directions of the Chief Officer responsible for complaints and discipline - usually the Deputy Chief Constable, or in the case of the metropolis, an Assistant Commissioner. Final reports are collated and forwarded to the PCA after recommendations are made regarding further action. The PCA makes the final decision and these matters can only be resolved with the blessing of the Authority.

The PCA compiles data on complaints which they produce in their annual reports for the information of the Home Secretary, the police and the public. Contained within those publications are a number of tables and charts relating to police behaviour for each police force, ranging from incivility to serious assault. The tables and charts within the document relate specifically to the police discipline code and are compared, measured, and categorised in

the same sort of way as they are in education, school against school or in this case, force against force. Previously, the PCA Annual Reports (and those produced by the Police Complaints Board (PCB) prior to 1985), have been criticised as being dull, boring and extremely complex (Maguire and Corbett, 1991), however in recent years, the PCA have made a real effort to make the reports readable, interesting, and understandable. The use of photographs and charts have been particularly useful in explaining points.

These documents hide the sheer complexity of the system of police complaints which Maguire and Corbett (1991) recognised in their study. For example, complaints against police in each Annual Report represent only a proportion of all complaints that are made. This having been recognised, the statistical analysis of data drawn from PCA Annual Reports is evaluated later in Chapter 8.

#### ESTABLISHING GUILT OR INNOCENCE

The PCA have been widely condemned in the past, by some critics, as working too closely with the police or for only substantiating a very small percentage of complaints made annually. To combat these allegations the PCA in their Triennial Report of 1988 and on many occasions since, have proposed a change by lowering the burden of proof in disciplinary matters. They suggested to the Home Secretary at the time that the level of proof in minor cases of discipline should be lowered from 'beyond all reasonable doubt' to the civil legal level, 'on the balance of probabilities'. The PCA contend that the discipline system in the Fire Service, subscribes to the lower standard of proof and that they see no reason why, in a modern society, the same system should not work just as well for the police. Indeed Employment law generally subscribes to the same standard of proof. Clearly the Home Secretary accepted advice from the PCA and the Home Affairs Select Committee on this issue, because a change in the balance of proof was brought about by the Police Act 1996. The system works on sliding scale of "on the balance of probabilities" for the more minor offences whilst the more serious cases would still be treated under the original balance of proof, 'of beyond all reasonable doubt', so in effect there would be little change at the serious end of the scale. The more serious matters are those which render the accused officer liable to dismissal, requirement to resign or reduction in rank.<sup>7</sup>

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<sup>7</sup> For more information on this matter see Sec 84 Police Act 1996 which also considers the matter of legal representation in more serious matters.

## CRIMINAL MATTERS AND DISCIPLINARY PROCEEDINGS.

When prosecution papers are passed to the DPP for consideration in respect of police officers, he is aware of the very high standard of proof required to convict a policeman. Juries appear very reluctant to convict officers of the law.

This factor led Harriet Harman MP (1983) to conclude thus;

“Police officers were better protected than ordinary members of the public since the Director of Public Prosecutions always took into account the reluctance of juries to convict Police officers” (Hansard 4.5.83 col 302-3).

The DPP applies what is sometimes referred to as the 51% rule which means that there is a fair prospect that a reasonable jury is more likely to convict than to acquit on the evidence. The DPP commented on the likelihood of convicting police officers in an article reported in The Guardian where he said:

“It is sometimes suggested that... we tend to favour police officers. That is certainly not our intention. We try to apply the same test... Our conviction rate of prosecutions against police officers is certainly lower than in other cases. But this may be a reflection of the traditional reluctance of juries to accept the words of a citizen, with, perhaps a criminal record, against that of a police officer- a reluctance which I find wholly understandable but which sometimes makes it rather difficult to assess the chances of success in prosecutions of police officers” (Hetherington, 1980).

The burden of proof required in criminal cases as well as disciplinary matters is that of ‘beyond all reasonable doubt’ although as outlined earlier in this chapter a sliding scale of proof introduced with the Police Regulations 1999 replaces the latter in favour of ‘on the balance of probabilities in less serious matters. When papers are returned to Chief Officers marked ‘there is insufficient evidence in this case realistically to obtain a conviction’, formal discipline is considered using the same standard which very often means that discipline is not recommended. In effect the DPP’s decision pre-empts disciplinary proceedings.

It is a commonly held perception that police are only accountable to the Criminal Law. This ignores however many of the more formal and informal influences of accountability in respect of the individual and the community e.g. Lay Visitors’ Panels, the Press, Police Monitoring Groups, Local Authorities, The Audit Commission, Police Authorities, Police Consultative

Groups, and such organisations like the Commission for Racial Equality. Some critics might argue that the informal influences upon police were not prescriptive or statutory and therefore still render them unaccountable for what they do.

A police officer has an original power to uphold the Queens Peace given that the law is passed by Parliament, no one can tell him/her how to act in upholding the law. Therefore, the Policeman is no one's servant and this aspect was re-enforced in two pieces of case law, namely Fisher v Oldham Corporation (1930) and R v Metropolitan Police Commissioner (ex parte) Blackburn 1968. In the latter case Lord Denning is quoted as follows;

"I hold it to be the duty of the Commissioner of police as it is of every Chief Constable to enforce the law of the land... but... he is not the servant of everyone save the law itself. No minister of the crown can tell him that he must or must not prosecute this man or that one. Nor can the Police Authority tell him so. The responsibility of law enforcement lies on him. He is answerable to the law and to the law alone". (Pope, 1981, p44)

The fact that police are only answerable before the law is problematic for police discipline investigations as many of them are never reviewed by any independent body (DPP or PCA) because they are considered as insignificant and minor in nature. Only the results would be forwarded to the PCA. This calls into question the probity of the police investigating themselves. Several Royal Commissions have failed to tackle this particular issue, especially important in the light of the number of serious miscarriages of justice that have occurred over the last 20 years. However a recent feasibility study commissioned by the Home Office by a firm of outside consultants has reported in favour of an entirely independent investigation squad and change in this area may be forthcoming.

The introduction of the PCB and latterly the PCA together with Home Office policy have helped to erode many police managerial powers and yet to many critics only more control of the process which sanctions them will further recover the legitimacy of the police.

## GUARDING THE GUARDS

The origins of an independent review of police actions in the United Kingdom can be found by looking abroad to places like the United States of America, Canada and Australia. Borrowing ideas from a number of different

jurisdictions in other countries has been the principal way in which the law has often been developed. Independent review of police misconduct in England and Wales existed during the early years of the new police where certain Watch Committees of the Victorian era exercised control of police discipline. The Watch committees took their responsibilities very seriously because, as civilians charged with maintaining the efficiency of the police, they held hearings which determined the guilt or innocence on police disciplinary matters brought to their attention.

Before the organisational context of the police disciplinary system can be discussed, it is essential to identify the key elements which may satisfy any observer that an effective police complaints system is working. Maguire and Corbett (1991, p186) describe them as:

1. The maintenance of discipline in the ranks.
2. The satisfaction of the complainant.
3. The maintenance of public confidence in the police.
4. The provision of feedback from consumers to police managers.

One of the fundamental issues regarding police discipline is that such a system must constitute a serious deterrent. Specifically this means that as far as outsiders are concerned there is a confidence in the process matched by a police determination to satisfy the complainant. One method that could easily show this point would be demonstrated by high levels of substantiation of police discipline. Up until the early 1970s substantiation rates were as low as 2% and far too low to constitute a serious deterrent to police misconduct or high enough to satisfy the complainant. Between 1979 and 1989 the substantiation rate (those completed complaints which were upheld) rose to 4.2% or if calculated in another way and including the new system of informal resolution substantiation has risen over the same period between 8-11% (Maguire and Corbett, 1991, p187).

On the face of it the low levels of substantiation do not appear to be a significant deterrent to the police, so as a result are unlikely to make any difference to behaviour. Nor do they represent a serious determination that citizen complaints are being taken seriously by the police. However there is a possibility that aberrant police behaviour may be curtailed in the event of a lowering in the burden of proof regarding disciplinary matters with its

consequential increase in substantiation rates. However the downside of such action may lead to a reduction of pro-active police work and the reluctance on the part of some officers to get involved, one sure way of not attracting complaints. A lowering of the burden of proof will be discussed later in this chapter.

The introduction of the PCA in 1985 was seen by some critics as the answer to public satisfaction by external review of police misconduct yet experience has shown that their functions are inadequate and the system insufficient for current public approval.

### THE POLICE FUNCTION

Critics of the current system of policing in the UK argue that cases of police misconduct are not about the frailties of police officers but more about the system of policing itself. Policing is a singular occupation not carried out by any other service, so direct comparison with the Fire Brigade, for example, is erroneous. Waddington for example asks 'What do policemen do?' In seeking to answer his own question he states that;

'They authoritatively intervene in the lives of fellow citizens. They take charge of incidents, no matter what the incident is. They ask questions and demand answers. They ask or tell other people what to do and, if they fail to comply, they make them do it. Despite claims to the contrary, police officers are not and never have been citizens in uniform. They do not act as do other citizens, for ultimately they are licensed to use force (a euphemism for violence) to achieve lawful ends. In other words, officers act routinely as a matter of duty in ways that are exceptional and downright illegal if done by anyone else' (1997, p25)

Because the police are the institution of last resort, when all other agencies have failed or are closed, out of money or have just gone home, it falls to them to resolve society's ills. They do this by using laws not always designed necessarily to fit that particular crime: for example in domestic violence cases men are often arrested for public order matters.

Therefore, Waddington states the lesson should be clear;

'Police should be given adequate and legitimate powers to do their job effectively, then standards of conduct may actually improve.' (Ibid, 1997, p26)

The problem of legal definition in much of the Criminal Law is seen by some observers as being kept deliberately vague and woolly in order to make it simpler for the police, who may then apply discretion to resolve the particular situation at hand. They suggest that it is impossible to create laws which deal with all situations, at all times and in all places. Others contend that as society becomes more complex there should be a constant refinement of the law to govern the multiplicity of activities, (Clissitt, 1969) and not doing so would undermine the rights of citizens. The argument here revolves around enforcing the letter of the law rather than its spirit. Jefferson and Grimshaw argue that the police should be placed in a judicial sphere of accountability although they do acknowledge that often the law is inadequate because it is;

“Lacking internal definition and permitting a broader range of options to fulfil statutory duties, the law of the executive presents a distinctive set of powers and duties for those who undertake administrative and technical regulation and control” (1984, p172)

The issues of interpretation and discretion are both problematic in terms of the law and the complaints system especially, given the peculiar nature of police accountability.

I now wish to turn to the evaluation of external monitoring of the complaints system in England and Wales.

#### EVALUATING INDEPENDENT OR CIVILIAN REVIEW.

Between 1976 and 1984 public concerns were focusing on the relationship the PCB had with the police, its ability to remain independent and make hard decisions in difficult circumstances; especially in those cases which opposed the police. In essence this meant that public confidence was determined by the relative power held and exerted over the police. However the legitimacy of the PCB was called into question because of its inability to influence and control police behaviour - a contributing factor which caused their replacement by a more powerful civilian body, the PCA. Whether the PCA have the means to do this in respect of police complaints can only be considered during disputes when matters are aired in the public arena. Certainly the PCA have demonstrated a greater control over the police than the PCB.

As I have noted the status of the PCA in England and Wales is that of Ombudsman. Their relationship with both the police and the public is both involved and complex. The definition and essential characteristics of the

ombudsman have been discussed previously. However its operation must satisfy the following elements;

'The complaints handling occurs to some degree outside the physical and organisational confines of the police force (ie. it is external) it is accountable to an autonomous official or body (that is independent) and the staff of the complaint agency is in some measure comprised of no police personnel (that it is civilian). The term external is intended to refer to those complaints systems in which some, if not all, of these elements are present. (Goldsmith, 1991, p6).

The trend in some countries has been to appoint citizens to panels called Civilian Review Boards (CRB's), mentioned earlier in this chapter. These are composed of citizens<sup>8</sup> who examine complaints against police officers and determine whether such complaints have merit. After reviewing investigations, some review boards have only the limited authority to recommend punishment, or further investigation by the police department, whilst others have the authority to punish errant officers without sanction from the Chief Officer. There are no CRB's in the United Kingdom.

CRB's have come in for some criticism, especially with reference to the term independent and more especially in terms of their relationship with the internal police investigation. The fact that their independence is questioned and that they maintain close contact with the internal investigation side of police complaints calls the system into question. Working too closely with police undermines the independence of any review body. Whilst this may have been the case with the PCB it appears not to be true of the PCA. Throughout the world the number and variety of bodies responsible for the overview of police complaints appears endless. Criticism of civilian or independent review includes accusations that they erode the morale of police officers but also threaten administrative control and management of police misconduct. Police discipline can end up becoming the sole responsibility of the review panel - leading to fears that a diffusion of formal command is likely to lead to accusations that leadership has become impotent.

Very often the levels of co-operation between the various civilian bodies and police have broken down, sometimes completely. The police have a significant following in terms of support, in times of crisis, from other groups within the criminal justice system and on some occasions the Government. In the United Kingdom various pro-police pressure groups have spoken in one voice to thwart, very successfully, the proposals of the

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<sup>8</sup> Panellists who sit on CRB's are barred in many jurisdictions if they have had any connection with the police, either through employment or family connections.



Sheehy Inquiry. This inquiry was an examination of police responsibilities and rewards by a panel of businessmen who reported to the Home Secretary in 1992. The following year its recommendations appeared in the Government White paper entitled "Police Reform". It was a very unpopular enquiry as far as police at all levels were concerned, because it sought without proper consultation, in their view, to put the police both personally and organisationally on a business footing. The proposals indicated a huge shift towards central control with reforming pay, pensions, conditions of service and removal of job security. The introduction of ever increasing performance targets meant a greater devolvement to local police commanders. All the police staff associations (the Police Federation, the Superintendents Association and the Association of Chief Police Officers) pooled their resources to neutralise most of the recommendations.

The powerful pro-police lobby also works in other jurisdictions. In Victoria, Australia the relationship between the PCA<sup>9</sup> and the police was strained. In mid 1987 the PCA publicly pointed out that the investigations of the Victoria Police were seriously lacking in professionalism and effectiveness (Freckleton and Selby, 1988, p58). The former Commonwealth Ombudsman reported the appalling relationship between the PCA and the police and recommended that, subject to significant improvement, the PCA should be abolished in favour of the jurisdiction being handed over to the Ombudsman.

Within a matter of weeks, legislation was passed which enabled the powers and functions of the PCA to pass to the Ombudsman which was done amongst a great deal of public angst and recrimination. (Goode, 1991, p146)

The critics do not take into account the considerable turmoil involved in creating and maintaining a non-traditional structure. Police organisations have been very hostile to efforts to increase their public accountability through civilian incursion into their disciplinary systems. While police in democratic societies have been subject to the rule of law and state allegiance both to legal constraints on their authority and to their obligation to account to civilian masters, they also operated more organisationally. They have done this through much more informal rules understood within the institution as more reflective and supportive of police attitudes and values. Attempts to create or operate a civilian review of police complaints systems which ignore the police subculture or which are determined to defeat it, will have little impact on police and have been vulnerable to police counter attack.

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<sup>9</sup> The Australian version of police complaints was also called the Police Complaints Authority.

In Toronto, Canada, the system of complaints was the result of protracted negotiation with police management and the Police Association. Its creation was a timely response to a crisis in police community relations in the city during the 1970's. The value of reducing persistent debilitating criticism through sharing authority with the community and through increased openness and regularity in complaints resolution would, according to police managers, be very beneficial. Even the Police Association stated that the proposed system offered greater protection to officers than was afforded by the internal disciplinary system. The association also saw an opportunity to defuse considerable public hostility and, through enhanced community support, to improve officer morale.

The reaction to the implementation of independent review experienced less obstruction in Toronto than it did in Australia and Britain. In Toronto the police were included in helping to shape, take part in and adjust the system designed to enhance their credibility, although the experience in Australia and the United Kingdom was that police co-operation amounted to an insistence upon the status quo, denial of problems and little change. Taking part in such a process had for the police more to do with erosion of power, status and control rather than self determination and self regulation.

There are three particular features of the Toronto complaints system which sets it apart from other models and these include;

- i) the extensive civilian investigation of complaints
- ii) the substantial rights of the complainants and
- iii) civilian board of enquiry hearings

Civilian critics of the process tend to have little regard for the significant impact of these factors. Lewis (1991) describes the Toronto complaints scheme as a product of dynamic, ongoing reform processes which have merged and been shaped within a set of important structural constraints. She states further that;

an adequate appreciation of these constraints and the volatility of the reform process is critical if scholars and policy makers are to make significant contributions to law reform in the area of police complaints procedures. (1991, p 162)

The Toronto system uses the potential for active civilian oversight to encourage the police to exercise their authority and obligation of self

regulation. The new system not only promotes police self determination but also recognises their entitlement to manage whilst also guarding against inside problems and imperfections.

The power and authority vested in the Civilian Boards is considerable. For example, Lewis elaborates on their powers;

'they may review a complaint and dismiss it, or if the misconduct of an officer is proved beyond a reasonable doubt they may find against him and impose a penalty it deems appropriate, from mere reprimand to dismissal from the force. Such penalties may be imposed without the sanction of the Chief of Police. No other system except that in the province of Manitoba, and another proposed in the Province of Quebec, vests such power external to the police. All other systems at most permit civilian agencies or boards to recommend discipline to the Chief of Police. (Ibid, p164)

Indeed in the Toronto system the board's penalty decision can supplant that of the Chief of Police. Under the legislation the disciplinary authority of the Chief of Police is not final, although the process fosters and protects appropriate decision making on the part of the chief. Predictably, this extraordinary aspect of the system has drawn the greatest police resistance and has been the focus of a significant police attack on the legislation.

The Toronto system seems to be working to satisfy the needs of the complainant whilst managing to recapture the credibility and legitimacy of its police by the introduction of CRB's of a more extreme form than in England and Wales.

The following two leading commentators raise important issues on independent CRB's. The President of the Toronto Criminal Lawyers Association in his submission to the Attorney General of Ontario wrote,

"In my opinion the city's public complaints system is a very good one, which has served to act as a deterrent (with some exceptions) to those officers who might otherwise have crossed the line of proper police conduct; it has brought the city of Toronto additional respect for its civilised way of life particularly from a number of minority groups who had become so disturbed with police treatment; and it gave to the Metropolitan Toronto Force a new found respect which it had been losing through the media. (McMahon, 1988, p301)

As Maxwell Yalden, Chief Commissioner of the Canadian Human Rights Commission, said in his presentation to the Ontario Task Force on Race Relations and Policing:

‘The greatest enemy of effective policing is loss of public confidence. Civilian oversight through review of public complaints, assists police to achieve congruence with the values and expectations of the broad community and has the potential for generating high police morale through that increased public support necessary for Police and community harmony.’ (Lewis, 1991, p174)

Public confidence in the complaints process is a most essential element in terms of legitimacy of police. Dissatisfied people are less likely to complain against police in times of low public confidence and a true gauge of feeling can not be measured, even if one accepts the notion that complaints are a healthy feedback indicator regarding the temperature of public feelings. Inadequate internal complaints mechanisms not only undermine public trust and confidence in the police, but also as one critic suggested that;

‘arguably they are also socially inefficient. Grievance often feeds alienation, anomie, frustration, anxiety and kinship friction and is an enormous waste of money, time and resources for individuals and the economy in general. (Black, 1980, p7)

Improving the system of complaints against police to the satisfaction of all parties is a particularly difficult feat. Making progress towards civilianisation of complaints appears to be the way forward. However the loss of influence and control on the part of the police attracts accusations of undermining and reducing police morale. On the other hand balance must be achieved where the competing interests of high police morale and high public satisfaction co-exist.

In this section I have evaluated the issue of independent Civilian Review taking account of various English speaking jurisdictions around the world. The credibility of any complaints system relies heavily on co-operation between police and public where openness, trust and integrity play a fundamental part in the process. The following section considers the legal position of the police in handling (reporting and recording) complaints where on occasions openness and integrity are compromised in favour of showing the police in a more positive light.

#### **POLICE ACTION, DISCRETIONARY POWER AND COMPLAINTS.**

The obligation to interpret and administer legal definitions rests solely with the police and to no one else, not even the PCA. As with any legal definition, the translation of behaviour into words requires those who are charged with the task of overseeing complaints to apply discretion in their decisions. The police themselves decide whether to take, record or dismiss a

complaint. Often, as Russell (1976) argues, the police are able to deter, persuade or deflect a complainant from their intention to report their disapproval. This precise point was highlighted by Barton when he said;

'One of the most crucial times in the life of a complaint is the time of reception and there are many ways in which it can be deterred at this point. The very fact that it must be made at a police station is bound to have a deterrent effect.' (1970, p454).

There is an apparent reluctance to record the complaints of people who come to the station, and it appears that there are many hurdles that the complainant needs to clear before they are successful in getting their dissatisfaction recorded. Even then the police maintain discretion as to whether or not to record, classify or investigate a complaint. Evidence taken from research into complainant's views show a failure to record complaints. The reasons that complaints are not recorded range from unwillingness, denial that a senior officer is available, breach of time limit, misunderstanding (D. Brown, 1987, pp 61-62), or possibly just plain incompetence.

The nature of police work and their experience with the law make police officers extremely skilled in interpreting meanings before important decisions are made. This concept, sometimes referred to as discretion, is discussed fully in Chapter 6.

From a police perspective there are certain groups who are deliberately excluded or disenfranchised from making an official complaint against police, yet they are perhaps the best placed with their distinct insider knowledge of the police. For example police officers, their families, members of the Special Constabulary and civilian staff, are not considered members of the public within the definition, and can therefore not make official police complaints. On this very point the Chief Constable of Humberside said;

'If you are a member of the public and you wish to make a complaint against a police officer, you have a clear remedy provided by Section 84 and 85 of PACE. If you are a serving officer, the police regulations do not allow you to be treated as a member of the public, if the complaint arises out of your duty as a police officer. If your complaint is against senior officers, and they are responsible for the internal complaints system, you are even more disadvantaged. Police Regulations prohibit a serving officer from taking matters directly to the Police Authority or even their MP.' (Leonard, 1998 p4-5)

On the one hand the police may listen to complaints by members of the police organisation who can be restrained from making any official complaint under Section 65 of the Police Act 1996 and call for an internal

investigation.<sup>10</sup> On the other hand, anyone who complains about senior police managers risks bringing the full weight of the disciplinary process to bear upon them. In 1998 a case which attracted significant and critical external comment related to the case of Inspector Dena Fleming who brought a sex discrimination case against her senior managers in Lincolnshire. She had used a covert tape recorder to record evidence for her claim. Once the recorder was found she was sent home on enforced leave and later served with a notice of impending disciplinary action, even though under the Sex Discrimination Act 1975 the use of a tape recorder to gather evidence is specifically allowed for and viewed as a protected act. Here, the disciplinary process was implemented against a serving officer attempting to highlight discrimination within Lincolnshire police. Later the officer was exonerated at an Industrial Tribunal, compensated and transferred at her own request, to a neighbouring police force. Police officers who complain especially about senior officers or about policy implications can be severely disadvantaged, even though (conversely) whistle blowing is being actively encouraged in the service and more particularly the Metropolitan and Merseyside Police (Packman, 1998).

The decision to report, record and investigate a complaint rests entirely with the police who are not even duty bound to inform the PCA. However, it must be said that there is an increasing trend on the part of Chief Officers, voluntarily to refer certain matters, usually those of public interest, to the PCA on those cases that fall outside the definition of mandatory reporting (Sec 88 PACE), causing the Chairman of the PCA to comment in the 1996/7 Annual Report to the Home Secretary, thus;

'In 1991 there were nearly 500 cases under supervision...in 1997 that figure had doubled to 998 cases. Of the 500 cases in 1991 only 61 were non complaint matters [but]... in 1997 that figure had risen to 154 cases.' (PCA, Annual Report, 1996/7, p9)

These matters are termed 'internal investigations' or matters which have been detected within the organisation, without any official complaint being made, and reference to the PCA can be made if it is felt that there is sufficient concern or public interest for the matter to be referred and supervised. The PCA argue that sufficient confidence in the complaints

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<sup>10</sup> There are distinct differences between the notion of 'complaint' and 'discipline'. Discipline usually relates to internal matters arising from detection within the police service whilst complaints originate from outside the organisation and involves members of the public.

system must exist amongst senior officers, in order to explain why increasing numbers of non referable matters are sent to the PCA.

On receipt of a complaint by the Chief Officer the matter should be allocated to an investigating officer who has no connection with the initial case. An investigating officer should be as impartial as possible. However the recent debate on police and the masons has caused some problems - as membership by both investigating officer and an accused officer precludes the former from dealing with the case. The PCA have been contacted for permission to replace the investigating officer in order that at some future time claims of partiality can be allayed. The investigating officer considers two aspects to each case. Firstly he/she will deliberate on the sufficiency of evidence in respect of the Criminal Law and secondly the disciplinary aspects relevant to the Police Code of Ethics. Once investigated the papers are then submitted to the Director of Public Prosecutions (through the Chief Officer or his deputy) who considers whether there is sufficient evidence and whether it appears to be in the public interest to prosecute. The Chief Officer makes his recommendations to the Director of Public Prosecutions (DPP). It has been acknowledged that in borderline cases or cases lacking in evidence there should be a fall back position - where the police discipline system is used in preference, with its lower standard of proof. This has meant for example that the DPP, who may not be in favour of prosecution, has suggested that the lower burden of proof makes a disciplinary prosecution liable to be more successful. This remains the subjective assessment of those sitting in judgement.

Serious complaints like assaults, corrupt practice or neglect of duty, have a statutory requirement to be reported to the PCA immediately after any complaint details have been recorded. The PCA can choose whether to supervise the matter, and/or direct the course of the police investigation, and monitor its progress. Internal investigations not referred to the PCA will be dealt with without independent review using a high degree of flexibility, discretion and secrecy. Accordingly, there appears to be little accountability in respect of any decisions reached on such matters. Even serious disciplinary matters falling outside the scope of PACE and discovered within the organisation can still be concealed.

At the time of reporting minor complaints can usually be resolved at Station level by an officer of supervisory rank. The practice certainly within the Metropolitan police - was for the Duty Officer (Inspector)<sup>11</sup> to deal

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<sup>11</sup> This process was revised on 31st March 1999 to include the fact that any officer of

personally with the complainant and to take any immediate steps to secure information or evidence as necessary. Alternatively, complainants may get a visit by a more Senior Officer to provide the opportunity to outline the grievance or withdraw the matter. The procedures for dealing with the initial reception of complaints may differ from force to force.

Police forces are measured annually by the number of complaints made against them and there is a temptation to engineer results simply by skilful use of discretion, especially with internal enquiries. Concealing and not recording complaints has serious consequences. Figures that never find their way into the annual reports submitted by Chief Officers to the Home Secretary are lost for ever and present a false picture of customer satisfaction.

Police forces have long exhibited a degree of laxity towards the recording of complaints, including the lack of provisions for adequate and uniform procedures and resources for keeping such records. Many police forces display a lack of foresight in managing complaints which would be useful in strategically identifying practices which attract complaints. Her Majesties Inspector of Constabulary (HMIC) in their Annual Report put it thus;

“Many forces had the scope to introduce management information systems [which would] identify trends in complaints, highlight management issues and provide sufficient training in the avoidance of complaints” (1995-6, p114).

Moreover, with the introduction of the Chartermark,<sup>12</sup> certain grievances can easily be diverted away from the complaints system simply by re-defining the problem within the standards set by the charter or by arbitrary use of discretion.

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supervisory rank should deal with the matter. This change became part of a new strategy for complaints and discipline, introduced by Metropolitan Police Special Notice 5/99.

<sup>12</sup> In the early 1990's the Conservative Government under William Waldegrave implemented a qualitative initiative called Chartermark. This process became part of a drive to satisfy concerns that merely focused on quantitative measures. The Metropolitan Police took this initiative on board, introducing trained and qualified Quality Assurance Inspectors in an effort to maximise their chances of achieving the required standard. Applicants were inspected by a Government department and allocated Chartermark as a level of excellence, which for the successful entrants meant that they were recognised for their quality systems, usually relating to customer care.



## INVESTIGATING INTERNAL DISCIPLINE

The police disciplinary system is in theory, distinct from the complaints procedure. In practice, if a disciplinary charge arises as a result of a complaint, the one may lead to the other. One major fear of the police especially for street level officers - is the fact that they can be caught out by some failure of duty that has been detected but does not necessarily arise from a complaint itself. An example of this might be when a police officer has a 'Police accident' which may not be his/her fault and failure to properly book out a vehicle may result in a disciplinary finding of guilt. The police seem better able to deal with minor infractions of police discipline originating from internal investigations rather than from coping with civilian complaints as Harrison makes clear that:

'Most discipline actually does not arise from complaints as the low substantiation rates bear witness, however it is much more common to arise from internal review and investigation which may explain why the system described often seems ill suited to resolving complaints from members of the public.' (1987, p 51).

Senior Officers often feel that interference in this aspect of police discipline constitutes managerial erosion; a factor which caused Sir Robert Mark to retire in protest as Commissioner of the Metropolitan Police in 1976 because the PCB were to be introduced as an independent element to complaints over view. To him this was an infringement of the rights of Chief Officers to manage discipline within their respective forces. Yet Chief Officers maintain discipline through internal mechanisms designed to highlight malpractice and corruption. The introduction of the PCB had more to do with removal of status and power from Chief Officers by an outside organisation who apparently knew little about the police. The understanding here was that only the police themselves with their exclusive knowledge of crime and investigation could appreciate how to deal with other police officers. Certainly as far as the Metropolitan Police Annual Report for 1991-2 is concerned internal investigation appears to account for at least 50% of offences detected with all those officers involved being required to resign or are dismissed (p110). This leads to the conclusion that not only are internal mechanisms working but also that management of discipline has not been eroded.

## INTERNAL INVESTIGATION- EXTERNAL CONTROL.

As we have seen in this chapter, certain sections of the public were concerned with the fact that any breach of discipline and any complaint investigation was handled internally by the police themselves. Up until 1976

there had been internal disciplinary controls; however the introduction of the Police Act in the same year brought with it an independent element of complaints overview and the creation of the Police Complaints Board (PCB).

The key question therefore must be; What is the acceptable balance between internal disciplinary controls and external independent review? This is precisely the issue critics argue must be addressed so that the correct level of control in these matters is achieved without compromising morale and management authority. Perhaps the more important concern for police managers is the fear that any external independent police discipline authority may subvert the whole of managerial legitimacy. There is concern on the one hand among those charged with implementing discipline within the police that there is no accountability by external review agencies (like the PCA) to the police. External review of matters *post facto* can be (according to them) flawed in that the PCA can direct disciplinary action on matters where Chief Officers have decided not to. To some, this situation results in blackmailing the Chief Officers to take disciplinary action on their own account rather than leave it to the PCA to direct action in front of a tribunal.<sup>13</sup> Even when a tribunal has been required, the matter of punishment is still referred back to the original disciplinary authority who had previously directed an alternative course of action. This can place Chief Officers in a difficult situation, determining punishment under such circumstances. Some senior police managers argue that external review bodies like the PCA can simply walk away from their responsibilities to an officer after action has been taken especially when he/she has not been dismissed. It is then the responsibility of the police service to help pick up the pieces and motivate and encourage that officer. On the other hand, the PCA would argue that justice must not only be done but must also be seen to be done. This process ensures that this occurs.

Police misconduct has hardly been out of the media over recent years. Often the consequences of aberrant police behaviour have focused on huge financial awards given after civil actions have been instituted by victims and their families. These large financial awards appear to vindicate the victim and implicate the police in misconduct. Each revelation, and subsequent

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<sup>13</sup>A tribunal can be ordered by the PCA under section 94 of PACE and requires 2 members of the PCA to sit with a chairperson who is a chief officer. This places the Chief Officer in a difficult situation of having to vote on the guilt or innocence of an officer when he is aware that recommendations for no further action or internal police action was recommended instead of a formal hearing.

manufactured media images of malpractice, generates calls for a change in levels of accountability, not only at the level of the individual but also with respect to control over policy and organisation. These calls for increased accountability at the level of the individual take the form of greater independent oversight of complaints against the police.

To increase levels of legitimacy requires the police to attain a new professionalism within the ranks, which, if meaningful in practice, requires accountability to be assessed along new dimensions and at more disaggregate levels of police organisations. New management strategies and strict legislation have been implemented in the post Sheehy era, with the slimming down some supervisory ranks at Superintendent level and below. This meant that decision making could be pushed downwards to allow for greater operational control at street level leaving senior managers responsible for managerial and policy matters. This has exposed individual police officers to more searching scrutiny and pushed responsibility to higher levels, but also affords greater protection to senior managers against discipline, unless an error in management or policy issues has been detected. This point is well made by Reiner when he says;

‘It allows management cops to do their business of presenting acceptable glosses of police practice to influential audiences while being shielded from the more sordid aspects of street policing. Only when the wheel comes off in a scandal does a token show of conflict between ranks occur.’ (1996, p736).

Will the police be willing to accept this? Are police forces capable of doing it? Are complaints authorities prepared to expand the scope of their oversight? They certainly say they are.<sup>14</sup> Goldsmith argues that legitimacy can be regained with:

“More independent civilian review is crucial to the legitimacy of the Police. Its purpose is not simply to punish erring individuals but to demonstrate to communities that the Police are responsible as an institution. Civilian review serves a demonstrative political function that is crucial to the Police in multi-ethnic communities” (1991, p ix).

#### THE PROBLEMS - SUBSTANTIATION AND DOUBLE JEOPARDY.

One of the major problems which has beset the complaints system is the apparent lack of belief it shows in public complaints and the very low

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<sup>14</sup> See evidence before the Home Affairs Select Committee report to the Home Secretary 16th December 1997 vol. 2 p48-68.

numbers of these which have been upheld or substantiated. Between 1979 and 1989 the average substantiation rate was 4.2 percent (Maguire and Corbett 1991 p35). The legacy of low substantiation rates is a fact which has cast a shadow over the complaints system. Complaints against the police are a serious matter and low substantiation rates only fuel the argument that public redress through the complaints process is often futile.

A number of research studies have considered the element of substantiation. Stevens and Willis (1981) concentrated their research on the Metropolitan Police over a period from 1970-1979 and found very low rates where a black or Asian complainant, aged 15-24 years old, with a criminal record, reported for an offence, who alleged an assault whilst in police custody would have virtually no chance of substantiating the complaint. Reiner underscores these sentiments by suggesting that;

“Not surprisingly in view of the pattern of discrimination in the use of police powers, blacks are more likely to make formal complaints, but less likely to have these upheld” (Reiner, 1985, p170).

The low levels of substantiation, especially on those matters originating from minority ethnic communities, does little to engender any form of confidence in a process which appears biased against them. This factor was alluded to by Maguire and Corbett in their study of the complaints system when their questions drew;

“negative answers from significantly higher proportions of black and ethnic minority respondents than of white respondents” ( Maguire and Corbett, 1991, p159).

Recent data drawn from PCA Annual Reports (1994/7) indicate that black and Asian complaints account for between 16-18% of all these handled by them. The Home Affairs Committee minutes of evidence, relating to the Police Complaints Authority dated 13th December 1995, recognised an over representation of black and Asian complaints when some 18% of complaints dealt with by the Authority came from minority ethnic communities (1995, p3). However only 2.3% of all complaints made to police were substantiated in 1996/7 (Home Office Statistical Bulletin 21/97). The PCA regularly objects that this comment is misleading since it takes no account of the complaints which are withdrawn, informally resolved or dispensed with. They add that over recent years roughly one in four cases that are fully investigated has led to disciplinary action of some sort being taken against officers. Maguire and Corbett agree with the PCA on this matter suggesting

that this bald statistic was inaccurate and that this figure belies certain hidden factors that;

“ large numbers are withdrawn, not proceeded with, or informally resolved and if these are excluded from the calculations, it emerges that 8% of investigated complaints were substantiated”.(Maguire and Corbett, 1991, p151)

This problem of low substantiation rates and the issue of the police investigating themselves is compounded, especially with the discretion to determine what evidence is counted in and what is counted out. It follows that an ethnic disparity in complaints rates also understates the differences in grievances. Fielding (1991) endorses this argument by suggesting that;

“ too low levels of complaint is as much a problem as too high, as it betrays a lack of confidence in mechanisms for responding to them”(Fielding, 1991, p179).

Maguire and Corbett suggested that the PCA were apparently not concerned with this matter especially as a performance indicator of effectiveness. They were more concerned about the number of cases rather than complaints and on action rather than substantiation.

Low substantiation rates and confidence cause some dissatisfied people either to seek redress elsewhere or to adopt an apathetic perspective by taking no action at all. If this is the case then the situation is unacceptable because the police should be striving to convince the public of the transparency regarding police decision making. Both of these courses undermine not only the whole complaints process but also the legitimacy of the police. The extreme of this of course leads to the withdrawal of consent in policing.

Furthermore the over use of stop and search powers coupled with under-use of the complaints process causes problems, not only at street level but also for police chiefs and other managers who fail to take complaints seriously. Managerial responses class complaints as an irritant; diverting valuable resources away from the main job of policing. These small numbers reflect a growing discontent in a system that is not working.

#### DOUBLE JEOPARDY.

Until recently one of the main problems that has dogged the complaints system has been the issue of double jeopardy. The issue of double jeopardy is a long established principle of the English criminal law. It states that no one, not even police officers, should be tried twice for the same offence,

even if fresh evidence comes to light or the accused person later admits guilt. The principle guards against a constant fear that the authorities will try to convict them.

This issue has been a major stumbling block for critics of police and their degree of accountability. The consideration to withdraw this legal privilege from the police has been under review by successive Home Secretaries since the early 1980's. Pressure to review this legal precedent has been put on the Home Secretary because of the case of Stephen Lawrence, where at a particular time insufficient evidence was used in an attempt to prosecute several people. The public outcry has certainly raised awareness on this matter and especially when the principle was designed to protect the innocent, not to help the guilty remain free from prosecution and give no account of themselves. Certainly in terms of police discipline the end of this principle was signalled when the Home Affairs Select Committee reported in 1997 suggesting that the notion of double jeopardy should be withdrawn. However the grass roots of policing who were supported by the Police Federation resisted any change in this legal principle. For police managers double jeopardy has remained the most serious hurdle in their ability to deal with police wrong doing. The HMIC recorded that;

"It has been suggested that the protection should be ended as unnecessary and unjustified in that it makes it difficult for forces to bring charges in circumstances when offences are similar but where the police feel a higher level of conduct is expected of a police officer than a member of the public." <sup>15</sup>

The officers who were acquitted of the shooting of Stephen Waldorf in 1983 for example, were protected by the double jeopardy rule and subsequently did not face disciplinary action. The Metropolitan Police must have reviewed the disciplinary implications of the shooting and considered any breaches of specific internal instructions or policy governing the use of firearms. No recommendations were made for disciplinary action - perhaps to minimise the adverse publicity the case had already drawn. To avoid the double jeopardy rule disciplinary action could follow only if the different evidence was used to support a disciplinary charge. In any event when Parliament considered PACE it specifically included double jeopardy protection for police in disciplinary matters contained in Section 11 Police Act 1976, against the wishes of civil libertarians. The legislation said;

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<sup>15</sup>See evidence submitted by HM Inspectorate of Constabulary Appendix 15, 4.2 Home Affairs Select Committee Report, 1997, pxli

"where a member of a police force has been convicted or acquitted of a criminal offence he shall not be liable to be charged with any offence against discipline which is in substance the same as the offence of which he has been convicted or acquitted."(Section 104(1) Police and Criminal Evidence Act, 1984)

This was a statutory bar that precluded disciplinary proceedings, and only a statutory instrument can reverse the situation. The question as to whether two offences are, in substance, the same can be complicated. Very often the mental element of intent in matters relating to the police discipline code is lacking. The Home Office Guide to Chief Officers at this point says;

...close attention should be paid to the similarity in elements of the criminal charge and possible disciplinary charge. In some cases they may not be as similar as appears at first sight; the mental element of the criminal offence may be lacking in the disciplinary offence. As examples in criminal proceedings against a police officer for corruption it is necessary to establish that the officer agreed to show favour to the person who he agreed to accept a gift or consideration but this element is absent from the disciplinary offence of accepting a gratuity; a criminal charge of perjury involves an alleged false statement was material to the proceedings in which it was made, but a disciplinary charge of falsehood does not... By contrast the criminal charge of assault and the disciplinary charge of unnecessary violence is the most common example of being in substance the same. (Home Office Guide to Chief Officers, Section 5.14, p25)

Prior to 1982, in cases where the DPP decided not to take action the PCB also did not recommend or direct a Chief Officer to bring disciplinary charges. This was felt under the circumstances a suitable extension to the principle of double jeopardy (Harrison, 1987, p54).

The Police Federation often contended that those responsible for the disciplinary process ignore the principle of double jeopardy when considering disciplinary matters. In a 1982 case before the High Court, R v The Disciplinary Board for the Metropolitan Police ex parte Borland (20th July 1982) the Police Federation assisted a Sergeant accused of corruption. After the DPP considered the matter he concluded that the evidence available did not justify criminal proceedings, however the Commissioner did bring disciplinary charges for accepting a gratuity or present. This meant that as the DPP had considered the matter and decided to take no action, the disciplinary charges constituted placing the officer in jeopardy of prosecution for the first time. (The Home Office guide to Chief Officers at the time directed against such a course)<sup>16</sup>. Nonetheless, the Court accepted that the instructions were only a guide and it was the domain of the

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<sup>16</sup> See also the discussion in Policing the Police by Derek Humphry 1980 Vol. 1 p72.

Commissioner, who should not be fettered in his discretion to prefer disciplinary charges. The current edition of the Home Office guide no longer contains this anomaly.

The practice of extending the double jeopardy principle by the PCB was also reviewed in another High Court's case in 1982. In the case of *R. v Madden and Rhone* it was successfully argued that consideration of a case by the DPP was different to actually trying it. Thus the Board should have considered whether or not to recommend or direct that an officer be charged with a disciplinary offence even if the DPP has decided not to prosecute (*Ibid*, p54). As a result of the High Courts decision the policy was later amended, as was the Home Office Guide to Chief Officers.

Throughout the 1990's the issue of double jeopardy in police discipline was seen as a legal loophole through which errant police officers could evade proper sanction. Even senior officers voiced their concern at the blatant lack of control exhibited by some of their officers whom they were powerless to discipline. The Chief Constable of Durham, the head of the Association of Chief Police Officers (ACPO) Complaints and Discipline Committee, George Hedges, referred to the lack of managerial control of police discipline. He accused the system of being over protective, over legalistic and over bureaucratic which protected those few officers who should not be in the service (1998, p15). The opposing argument - and one which had sustained the solid police grass roots response to criticism on this point for so long - rests with the fact that the sanction at the level of the Criminal Law is severe and may result in prison if found guilty. To have a second chance at police discipline after acquittal was considered to be unlawful and unfair. The apparent failure by juries to convict police officers created the problem which allowed errant officers to remain in the service even though their behaviour fell far short of what was required.

In 1999 Police Regulations were adjusted and the issue of double jeopardy was withdrawn by the Home Secretary from police discipline, once and for all, closing the legal loophole.

#### **FUTURE PLANS - INDEPENDENT INVESTIGATION OF POLICE DISCIPLINE AND COMPLAINTS**

For some 20 years the issue of the independent investigation (not external review) of police complaints has been a subject championed by a number of interested bodies and groups. These include Liberty, Inquest, and the Guardian newspaper (Toynbee, 2000, p18). The Home Office have



announced proposals for an Independent Police Complaints Commission (IPCC) to take over the powers of the PCA by 2003 (Ibid, p18) Although at this stage detail of the proposals are sketchy one of the fundamental changes will be the investigation of the most serious matters by a team of mixed civilians and police officers, headed by a civilian investigator. This means that the current system will move from independent civilian review to independent investigation. Greater openness is expected with the authorities providing a full report of each enquiry.

In May 2000 the Home Office published two independent reports as consultation documents, conducted by Liberty, the civil rights group and KPMG the City Accountants (commissioned by the Home Office) regarding the feasibility of establishing an autonomous investigation body. Both models are shown in Appendices 5 and 6 respectively. The proposals by KPMG have been submitted to the Home Secretary for consideration and a joint Home Office consultative paper was issued in May 2000 entitled 'Complaints Against the Police'.

Charles Clarke, the Home Office Minister, stressed that the government did not favour any particular model but that it should command public confidence (Orr-Munro, 2000, p24). Additionally, the newly established Ombudsman for Northern Ireland follows a similar model to those proposed. Their aims, mission and functions are shown separately in Appendix 8. Consultative arrangements with the police lobby will have also been made in order to gather constructive comment from them. (The result of these consultations are shown in the document produced in December 2000 and reprinted in Appendix 11).

## CONCLUSION.

This chapter has considered the contemporary history of the Police Complaints system. The current debates on police misconduct have been critically evaluated historically, legally, sociologically and institutionally.

This has shown up many of the imperfections and problems which has beset the system. The old problem of the police investigating themselves remained as a significant fault in the system. Other problems included;

- 1) There is a difficulty of access, control and assessment of police misconduct.

- (2) There is no proper measurement or patterning of police misconduct.
- (3) Once highlighted there was a denial that misconduct existed, where solidarity from an institutional, regional or local perspective discourages complainants.
- (4) Those who do attempt to complain are confronted with problems of reporting and recording their dissatisfaction. A veil of secrecy hangs over the whole process and the tactics of denial were employed to discredit, or dissuade complainants especially those socially excluded or from the lower classes. This sends a clear message that; it is futile to complain against the police.
- (5) The cost of justice and dealing with police misconduct is great. The investigation of complaints by the police is cheaper as opposed to taking on a system of non - police investigators which would have significant cost implications.

There is a crucial lack of confidence in the police complaints system. This focuses on the issues of control where police knowledge of the law, the organisation and the processes gives them immense power. This they use to good effect to dissuade complainants at every level of the process. Public impotence is reflected in ignorance, lack of information or simply just being worn down where simply withdrawing or not proceeding with a complaint is the easier option. The corollary of this notion relates to the control of information which again rests with police investigators. The lack of communication and feedback afforded to the complainant, where long periods are infrequently punctuated with little information and eventual unsubstantiation, does little to enhance confidence.

The complexity, formality and length of time taken to deal with cases are all problems of the system. The allegation that police partiality contributes to the high levels of unsubstantiated complaints is also a difficulty that is not easy to reconcile. To persuade the public to behave differently may only come about when an independent investigation mechanism is in place.

The legislation which controls the sanctioning mechanism for the police does not interfere with managerial control of police discipline. The recent application for judicial review of Police Discipline procedures by the Solicitor representing Neville and Doreen Lawrence in respect of discipline proceedings against Detective Inspector Ben Bullock revealed the exclusive, closed and secretive nature of this process. The quasi-legal process of police discipline suffers from a lack of legal principle where *justice must not only be done but it must also be seen to be done*.

I have placed the PCA in its legal context, outlined its functions, and critically assessed some of the problems which included the issues of police discretion, burden of proof, disclosure in court cases, double jeopardy, substantiation and the reluctance of juries to convict police officers standing trial. The record of the PCA especially in the early days 1985-1988 did not enjoy success, especially with the number of high profile cases it was required to deal with. To the public the complex, lengthy and bureaucratic procedures set in motion to support an investigation did not inspire confidence because justice for many complainants was not done.

The chapter deliberated on the gradual and begrudging shift in power away from police on matters relating to civilian complaints. The early 1960's marked the start of this process from internal police control and regulation in favour of more independent, external overview of complaints and discipline. The chapter also charted periodic expressions of public concern which were often translated into regulating legislation for the police in order to make them more accountable. The police have always maintained a strong commitment to discipline within their ranks. However this dedication has not equally embraced the issue of external complaints. The policing of complaints has been in crisis for over 40 years because the police chose the path of secrecy and denial. In the current age of co-operation and partnership which the police have come to expect of the public the issues of honesty and openness are at odds with the present police complaints system.

A review of the literature has thrown up problems associated with the role of police and their relationship with sections of society - specifically minority ethnic groups. It showed that black people appeared more affected by the issue of police misconduct. The high incidence of complaints of police violence against members of the black community is cause for serious concern. Black people made more and withdrew less complaints than white people, leading to an indication that perhaps there is justification in making those complaints in the first place and that no one is taking this seriously enough. The result leads to an ever downward spiral of relations with police where diverse sections of the community maintain lower dissatisfaction levels than more privileged members.

The institutional and hierarchical extent, nature and limits of police misconduct were examined revealing a system of power, control and manipulation of a process that discourages rather than encourages, denies rather than accepts and is dishonest rather than righteous. The process detracts from the aim where complaints should be an essential element in the balance of police accountability.

The question is 'What can be done about them and how the problems can be overcome? Action at three distinct levels must be taken: Firstly, encouraging rather than denying complaints would reveal a more accurate picture regarding the nature and extent of the problem. There should be the introduction of a policy or method that assists the making of a complaint. The reduction of the standards of proof required from the legal to the civil standard must be considered. This would add confidence by improving substantiation rates. Secondly, the removal of the discretion, investigation and handling of complaints to an independent organisation would ensure the dissuasion of citizen complaints and promote greater openness, honesty and integrity. This would reduce anxiety in complainants, improve communication and feedback. Thirdly, a review together with an overhaul of the independent elements (e.g. The DPP and the PCA) of complaints overview should be encouraged at the strategic level, and any recommendations or suggestions that reduce time delays should be implemented. The consideration of making public the disciplinary hearings should also be investigated. Easy to understand complaints data must be published at frequent intervals in order to estimate and gauge the nature of the problem and implement strategies to deal with it.

The following chapters consider the origin of police discipline from the introduction of the new police in 1829, the power relations that hold the police to account, together with the changing dimensions and problems associated with complaints. It also demonstrates how unthoughtful action on behalf of police, like stop and search tactics, effect police legitimacy and the very balance of consent in society.

## CHAPTER TWO

### THE HISTORICAL DEVELOPMENT OF THE POLICE FORCE

#### INTRODUCTION

Over recent years the issue of police deviance and wrong-doing has been a topic which has again been widely discussed in political, legal and academic circles. The issue has been fuelled by a number of high profile miscarriages of justice, corruption scandals and allegations of institutional racism. In truth, by the start of the 1990's the complaints system was in disarray, management was weak and hampered by an outdated disciplinary system. This meant that when the police were found to have blundered, little could be done because of a confusing, complex and obsolete disciplinary process. This did little to satisfy the principle that justice was being done and so time appeared ripe for radical change.

The modern day police until recently relied on a disciplinary system formulated over three quarters of a century ago and which had not only lost the confidence of the public but also of the police as well. Throughout the 1990's a number of problems had to be addressed at various levels of the organisation: Firstly, a recasting of the management role by identifying and dealing with the barriers to effective management. Secondly, reshaping the responsibilities and rewards of police duty at both the organisational and practical levels in order that they may respond more effectively to the needs of the public (Sheehy, 1993). Thirdly, to modernise the system of rewards and sanctions. The first two matters are dealt with in Chapter 4.

Managerial inertia and ineffectiveness has been a recent phenomenon and has blighted policing, particularly since the 1960's, yet this situation has not always prevailed. On the contrary at the start of the new police there was no doubt as to who was in charge. In those days senior police officers were ruthless and ruled their officers with an iron fist. Discipline was strict and punishments imposed were arbitrary with no right of appeal (Critchley, 1967, p152) leading to a great many dismissals.

In order to contextualise the current system it is essential to trace the historical development of the British Police Service with three aims in mind. Firstly, to delineate the difficulties experienced by the Commissioners in the creation of a professional, respectable and efficient police force. Secondly, to show how the issue of police discipline formed the foundations upon which modern day policing rests.

## THE CREATION OF A DISCIPLINED POLICE FORCE.

The Office of Constable can be traced back as early as the middle of the thirteenth century when towns and cities introduced a system of 'watch and ward'. This system allowed all able bodied men to serve under the constable as watchmen between the hours of sunset and sunrise. Rural areas saw the emergence of Justices who took preference over Sheriffs in terms of authority, thereby bringing the unpaid constable under their control and later this included their appointment to office as well. This system of policing emphasised the traditional Saxon principle of local communities policing themselves although the system had gradually fallen apart by the early Eighteenth Century. The onerous responsibilities of office were delegated to paid deputies who further deputised their responsibilities to people of low intellect and status.

This period saw the emergence of private police forces paid for by the middle classes to protect only the subscribers. Between 1750 and 1780 in London a New Police emerged called the Bow Street Runners under the direction of the Metropolitan magistrates John and Henry Fielding. In rural areas there was still much lawlessness and very often order had to be restored by using the Military, although even they were often powerless to intervene in riots. The Metropolitan Police Act finally came into being on 19th July 1829 after a considerable struggle and much debate. There was significant anxiety at the time because of fears that the police would become too powerful. In the forty years prior to its introduction, there were no less than seventeen Parliamentary Select Committees who debated the issues of law and order. In 1822 one such committee commented;

“it is difficult to reconcile an effective system of Police with that perfect freedom of action and exemption from interference, which are the great privileges and blessings of society in this country;.... the forfeiture or curtailment of such advantages would be too great a sacrifice for improvements in Police or facilities in detection of crime” (Royal Commission on Criminal Procedure, Cmnd 8092, 1981).

With its introduction the Secretary for the Home Department and main sponsor, Robert Peel, immediately set about finding suitable leader(s) for the new police. It was his wish to appoint two Commissioners in the first instance and he was most fortuitous to find two very good candidates a 46 year old Army Officer, Colonel Charles Rowan and a young Irish Barrister, Richard Mayne who was some 13 years Rowan's junior. Premises for the

new police were found at 4 Whitehall Place which backed onto a narrow lane to the east of Whitehall, called Scotland Yard.

The organisation of the London Police at the time was described by Critchley who noted that:

“London was divided into 17 Police Divisions with 165 men posted to each division, totalling some 3000 police officers in all. During August the Commissioners set about tirelessly, recruiting suitable candidates with regulations demanding they should be at least 5 feet 7 inches tall, under 35 years old, of good physique, literate and of good character” (1978, p51-52).

From the beginning there was a deliberate policy to recruit men " who had not the rank, habits or station of gentlemen".( Gash, 1961 p502) There was to be no caste system within the police as existed in both the Navy and Army. The wages were kept deliberately low, between 15s to 1 guinea (£1.1s) per week, for constables, (Sleigh 1844 p109) so as not to attract Military Officers in the first instance, but also to ensure that costs were kept down. It appears that this did not deter applicants from the military, but also from people who had influence with the government, including Robert Peel himself. Generally speaking however, these sort of applicants were rejected as candidates for the police.

Whilst recruiting was underway the urgent problem of framing the instructions of the new police was the next most important task. These instructions became known as the primary objects of the police and these are still as applicable today as they ever were. The main principle was;

"It should be understood at the outset, that the principal object to be attained is the prevention of crime. To this great and every effort of the police is to be directed. The security of person and property, the preservation of public tranquillity and all other objects of the police establishment will thus be better effected than by detention and punishment of the offender after he has succeeded in committing the crime" (Metropolitan Police, 1985, p40-41)

By Saturday 26th September 1829 sufficient numbers of men had been recruited and they were sworn in "en masse" by the Commissioners Rowan and Mayne in the grounds of the Foundling Hospital, Holborn. They were given a parcel each containing their uniform, their conditions of service were read aloud to them and they were given instructions as where they would be lodged. That evening they were shown, but not posted to, their beats. At 6pm on Tuesday 29th September 1829, just over 2 months after the act became law, the new police were marched out and posted to their beats. Instantly,

Londoners regarded them with hostility and derision, nicknaming them Peelers or Bobbies after Robert Peel.

The speed with which the police organisation was founded and organised, which some Londoners thought would not last, caused Peel to say to his wife,

" I have been busy all morning about my police. I think it is going very well. The men look smart and a strong contrast to the old watchmen" (Critchley, 1967, p53)

Peel was desperate for his new police to become accepted by the people. However the early 1830s saw the Reform Bill riots and calls for their abolition in favour of a return to parish policing. Rumours and inflammatory comments still continued in an effort to fulminate against the new Police. August 1830 saw the first murder of a police officer on duty; Constable John Long was stabbed to death in Grays Inn Road, Holborn.<sup>1</sup>

The new Commissioners tirelessly investigated complaints against police which were flooding into Scotland Yard (*ibid*, p54) Complaints were handled and investigated personally by them. An extract of the Regulations on misconduct explains;

"In cases of complaint against constables, the party complaining should address himself in the first instance to the Chief Constable, who will, in his discretion, proceed to enquire into the same summarily, or give immediate notice to a Justice of the Peace, who will proceed then according to law, if the offence is cognisable by him: and if the subject of complaint do not constitute any offence legally cognisable by him, the said Justice will lay a statement thereof before justices of the county at the next Quarter Sessions of the Peace, or any adjournment thereof, and the justices will enquire into the same". (Sleigh, 1844, p110)

Complaints of misconduct were diligently and expeditiously dealt with, which was quite some undertaking bearing in mind that there were only the two Commissioners investigating these matters. A comprehensive set of rules were developed and issued outlining the role and functions of each rank, however these rules were frequently being altered or changed. These rules or instructions defined police misbehaviour and were published and promulgated through Police Orders issued from Scotland Yard to stations at

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<sup>1</sup>Some historians attribute the first police murder to have occurred 7 weeks before Constable Long. On 29th June 1830 Constable Grantham stepped between two drunken Irishmen quarrelling over a woman in Somers town. They turned on him instead knocked him down where he received a kick to the temple and died within a few minutes.



various intervals. It was a requirement of each police officer to keep himself abreast of each police order and instruction. For example these instructions required that each police constable in the Force;

“should devote the whole of his time and abilities to the service, (to) appear neat in his person and correctly dressed in the established uniform: his demeanour must always be respectful to others. He shall not enter any public house except in the execution of his duty and not take liquor of any sort from the publican without paying for it at the time. Insolence and incivility will not be passed over. While on duty he should not enter into any conversation with any one....(and) ...he should be particularly cautious not to interfere idly or unnecessarily. Further instructions will be given to any constable who may find himself in need of them” (*Ibid*, p102).

Within a short time the Commissioners experienced great difficulty investigating their complaints because of the sheer numbers being reported. They examined ways that would be more efficient and effective. One of the problems they experienced was that many of the complainants could not identify the alleged aberrant constable. Although they supplied each constable with collar numbers many complainants failed to take the details. This led the Commissioners to issue another order on 11th October 1829 stating;

“Any man reported for endeavouring to conceal his number, or refusing to show or tell it when properly asked, will be dismissed, as such concealment or denial can only be caused by having done something he is ashamed of” (*Ibid*, p 103).

When the uniform was changed in 1863 the constables' divisional number was also displayed within the helmet plate badge. Another difficulty experienced by the Commissioners related to what constituted 'off duty' with respect to complaints. The instructions required constables to wear their uniform at all times, even when off duty, which caused difficulties when it came to, 'on duty' behaviour witnessed by a member of the public. Clearly the public could not easily distinguish between a police constable who was on or off duty. Another point of note would be that Constables worked 7 days a week, other than when they were on sick leave. This could lead to problems of supervision, especially as constables lived and worked in the community. It caused the Commissioners to issue another order on 8th March 1830 to the effect that:

“In issuing to the Police Force a new badge to be worn when men are on duty, the Superintendent will fully explain that the object in view is to prevent the constant complaints that would be made by the public on seeing those of the Police Force who are not on duty walking, or talking together, which they will now be able to do without that

unpleasant consequence, the badge will be worn on the left arm, just above the cuff ” (Ibid, p104).

The duty arm band became an everyday part of a police officers uniform but was phased out in the mid 1960s, having lasted over 130 years.

The harsh discipline also extended to the private lives of the police. For example the regulations stated that:

“All men of the force who shall associate, drink, or eat with any civilians without immediately reporting that same to the Superintendent, will be dismissed from the force” (Critchley, 1967, p151).

With the formation of the new police outside London, there appears to have been an independent element within the police discipline process. The disciplinary Authority within the Metropolis consisted of both Commissioners who had the power to pass matters directly to a Justice of the Peace to proceed according to law. Outside London there were wildly differing arrangements. Watch Committees of City and Borough Forces could suspend or fine any officer negligent or remiss in the discharge of his duty, whilst in other forces Justices of the Peace formed disciplinary panels to hear matters.<sup>2</sup>

The Commissioners would attend a station house for the purpose of inspection, to ensure their instructions were being carried out. A lack of supervision by Superintendents, Inspectors and Sergeants was a grave offence which invariably resulted in dismissal. Superintendents who were in charge of each station house would follow and ensure the Inspectors were doing their job of supervising the Sergeants, who in turn would follow the constables for the same reasons.

It was a grave offence against discipline to gossip idly or hold conversations with anyone in the street with authority. An instruction was issued on 6th October 1830 to the effect that constables found under such circumstances would be reported and the matter brought to the attention of the Commissioners. Judging by the number of defaulters and by the level of dismissal and other punishments awarded, the Metropolitan Police had significant numbers of unsuitable candidates. Drunkenness was the most common weakness, not only amongst police, but also throughout the population in general. It was a hard struggle to enforce the high standards.

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<sup>2</sup>County and Borough Police Forces Act 1859.

Each day brought dismissals for drunkenness and a first offence against discipline was always the last (Moylan, 1929, p108). Between 300-400 police officers were dismissed on average each year, and after Christmas in those early years large numbers of police officers were sacked without recourse to defence or appeal.

The first signs of a gradual and begrudging acceptance of the new police came in an instruction issued on November 5th 1830 some 13 months after forming, which read;

“The Commissioners have much satisfaction in acquainting the police, that they have received numerous representations, from gentlemen and respectable persons, of the courage and steady good conduct of the Police when assaulted, in different quarters, on Tuesday last: and the Commissioners have communicated this information to the Secretary of State for the Home department, who has directed the Commissioners to express to the police Force the satisfaction which this report of good conduct has given him” (Sleigh, 1844, p107).

It followed therefore that gradually the new police spread throughout England and Wales, although pockets of the system of parish Constable did remain in existence for some time. The police were accepted by the people, although the cost of such a force of men especially to some county rate payers was always a problem. The severe disciplinary measures and harsh conditions of service effected morale and contributed to the high turnover of manpower. Certainly as far as the Metropolitan Police were concerned, of the first 100,000 police constables recruited one third would be dismissed, one half would resign prior to pension and of the remainder 4000 died whilst in service, leaving the residue.(Critchley, 1967, p153)

Another problem which raised its head for the first time was the issue of police corruption. In 1877 three out of the four Chief Inspectors of the Detective Branch of the Metropolitan Police, later called the Criminal Investigation Department (CID), faced trial and were convicted at the Old Bailey for corrupt practice in connection with the Epsom Derby. Some critics felt these problems stemmed from the harsh conditions of service, the authority and office of constable and his particular relationship within the law. From time to time Royal Commissions were ordered to enquire into the conduct of police to ease public disquiet and dissatisfaction. These took place in 1855, 1906, 1929, 1960 and 1993; very often they were followed by legislation.

One of the most radical reviews of policing occurred after the Police Strikes of 1918/9 and led to the implementation of Police Regulations with its disciplinary code, under the Police Act 1919, by the Secretary of State. This created for the first time a table of rules or a code against which the behaviour of any member of the Police Force subject to those regulations, could be measured. The codified offences included such matters as discreditable conduct, disobedience to orders, neglect of duty and falsehood, to name but a few (See Appendix 3).

Between the wars and during the last world war little attention was paid to the policing of England and Wales other than to praise their diligent contribution to the public safety. For example after the General Strike of 1926 the police were held in the highest esteem for the manner in which they policed the dispute, resulting in The Times launching a fund in recognition of the nation's gratitude (Critchley, 1967, p199). The cosy relationship with the public did not last long. The alleged mis-handling of an incident in Hyde Park after dark involving a well known financial writer and a woman successfully brought calls for a Royal Commission. The Royal Commission of 1929 produced few recommendations of permanent value and sided with the police on most issues (Critchley, 1967, p201).

The focus of public attention was not drawn to the police until after the Second World War, when both academics and critics questioned the role of police and the issue of police accountability. By the early 1960s attention gradually turned on the police for the first time as a result of a number of controversial and highly publicised cases of police misconduct. Scholars also soon discovered that police work had little to do with crime control and had more to do with order maintenance and keeping the peace.

## CONCLUSION

The strict disciplinary controls exerted over the rank and file police in Victorian times clearly illustrates a closed, inward looking culture, seemingly impervious to outside influence or control. The recent police past has been problematic and in a constant state of scrutiny, review and change. This is so because some observers are critical of the peculiar nature and character of police accountability. They suggest that it is the police who decide how the public should be policed and in this way they can use wide ranging and often unstructured judgements about what laws to enforce against whom, under what circumstances, and in what manner (the issue of police discretion is also examined in Chapter 6).

## CHAPTER THREE

### POLICE CONTROL AND ACCOUNTABILITY

#### INTRODUCTION

In the last chapter the police were placed in their historical context, not only in terms of the development of policing but also in respect of police discipline. In this chapter the notion of police accountability and constabulary independence is discussed in order to elaborate fully the power sharing relationship. The chapter explores the constraints, influences and controls on the police, which came about within the last 30 years due to a blurring of responsibilities and objectives.

#### THE OFFICE OF CHIEF CONSTABLE.

The police service in England and Wales is controlled by a tripartite relationship that consists of a power sharing alliance between the Home Secretary, the police authority and Chief Officer. One of the major concerns of the tripartite relationship relates to the issue of complaints and discipline. Traditionally police discipline was viewed by the tri-partite arrangement as a question of management supervision, and as such the exclusive domain of the Chief Officer of the force concerned. To treat this matter in any other way was seen by the police as erosion of the autonomy of the Chief Officer, which would have made his position seemingly untenable. Accordingly, it was the Chief Constable of each force who would report annually to the Home Secretary on the state of the Force, covering a wide range of issues which included police discipline. The results of the discipline system were also recorded in the annual reports.

Discipline in the police force was seen very much as a low key issue and attracted little attention or cause for concern. For example, each report to the Home Secretary by the Metropolitan Police Commissioner (1949-1957) contained a simple 4 lined report on Discipline within the Metropolitan Police District. During the whole of that time it showed that they punished 1195 officers, arranging discipline boards for 302 and either ordered a requirement to resign or dismissal in 124 cases. It espoused a certain reassurance and confidence especially to other members of the tri-partite relationship that discipline within the police was not only under control, but also not a problem.

By contrast, today's Metropolitan Police Annual report is a far more hefty and detailed document. The simple title "discipline" has given way to "Complaints Against the Police", with sophisticated tables and charts featuring types of complaints, cases referred under Section 87/88 of the Police and Criminal Evidence Act 1984 (PACE) to the Police Complaints Authority (PCA), convicted police officers, police discipline cases completed, findings of disciplinary board hearings and disciplinary appeal hearings, to name but a few.

Despite these more detailed reports what is immediately evident from glancing at today's statistics on complaints, is the small number of officers who are successfully disciplined. Whilst the quantity of information may have increased the quality of the annual reports in terms of results seems on the face of it, not to have improved. One reason for this may be due to the complexity of the process and the need to satisfy the legal standard of proof, so that substantiation of complaints is difficult because very often evidence lacks corroboration (See Chapter 1). Whilst this might be the case, certain critics argue that;

"for example, in 1984 8% of all complaints were substantiated, not one complaint involving harassment, racial discrimination, false evidence or perjury was found substantiated; the same is true in 1983. Only 20 of the 1410 complaints of assault 1.5% were substantiated (Metropolitan Police figures)" (Lustgarten, 1986 p154).

The Chief Constable had to work with the Watch Committees who consisted of a compilation of Magistrates, local councillors and other responsible members of the public who were appointed to the post. The Chief Constable was also charged to operate an efficient and effective Police force by the Home Secretary. There were periodic reviews of police, as previously mentioned, usually implemented at times of general public concern. These reviews were called Royal Commissions who would take evidence, report their findings and recommendations to the Government, which would take appropriate action. The 1962 Royal Commission examined the relationships between the Chief Constable and members of the Watch Committee, and considered this to be cumbersome, ineffective, out of date and in need of change.

Accordingly, one fundamental recommendation of the Royal Commission set up in 1962 was the formation of so called "Police Committees" whose duties were formally established by Act of Parliament. The Police Act 1964 charged the Committee;

" to maintain an adequate and efficient Police Force in its area and to keep itself informed of the manner in which complaints were being dealt with and canvas views on Crime Prevention and Policing in the area". (Royal Commission, 1962, p8)

Whilst this sounds very impressive, what is the reality? In essence the Police Committee may call for reports from the Chief Constable on matters relating to policework. Police Authorities can now inspect discipline registers and reports of investigations. At local level, Chief Officers have complete operational responsibility and are required to note advice offered by the Police Authorities. There is no duty to act on that advice whatsoever. Direct involvement by political figures and representatives in operational policing matters have, according to Chief Officers, been unacceptable in Britain. On the other hand a Chief Officer who fails to recognise the political situation of any operational decision or policy making, would be foolhardy in the extreme.

Sir Harold Scott, Commissioner for the Metropolis during the period 1945-1953 highlighted the strange relationship the Metropolitan Police had in respect of its Police Committee - The Home Secretary. He said;

" The position of the Commissioner...is in no sense a dictatorship. The relationship between the Commissioner and the Home Secretary and his advisors at the Home Office is one of delicate equilibrium, for the Home Secretary may be called to account in the House of Commons for anything the Commissioner does, and it is no exaggeration to say that the actions of an individual police constable might in certain circumstances cause the downfall of a Home Secretary. The Home Secretary can not and ought not to intervene in the detailed control of the Force. His remedy, if dissatisfied, is to change the Commissioner". (Scott, 1954, p21)

Police Committees also have the power to dismiss their Chief Constable in the interests of efficiency, but this is subject to approval by the Home Secretary. The Home Secretary has the power of veto which he exercised in April 1990 in connection with the appointment of Derbyshire's Chief Constable. Other than this the Committee is virtually powerless, as Critchley pointed out in 1978, when he said ;

"It is already clear some of the newly constituted Police Authorities were anxious to play a more positive part in police affairs. They find the curbs set to their powers irksome and hanker after a readjustment of their relationship with Chief Constables so as to redress the balance in favour of greater responsibility and democratic control." (1978, p57)

The power to direct the operational side of police work rests with Chief Constables and not with police committees. This fact was re-enforced in the confrontation between Mr. Kenneth Oxford, Chief Constable of Merseyside and his Police Committee over the purchase and use of C.S. Gas and protective clothing /equipment in the Toxteth Area in 1981. Whilst acknowledging the strained relations which existed between both parties the police committee in fact censured their Chief Constable, only to find that he was supported by the Home Secretary, leaving them to conclude, in the words of Margaret Simey, Police Committee member ;

"that we had no powers..... has been a revelation. I realise now that there is no hope of running a big modern Police Force on the rules that are no more than a gentlemen's agreement" (Simey, 1980)

In an open fight between Chief Officer and Police Committee, the Chief Officer's decision has always been supported by the Home Secretary. In the dispute Merseyside Police had purchased CS Gas without consultation and had made an agreement for the expenditure of £53,000; a direct contravention of the County's Standing Orders. The Home Secretary adjudicated and instructed the Police Authority to pay the bill. On another level the police seem even more impervious to outside control especially when things go wrong and the media in its various forms highlights a disaster. A good example of a Police Force under siege occurred after a number of incidents in the Knowsley area of Liverpool in 1980, within a ten week period culminating in the death in police custody of Jimmy Kelly. This attracted a substantial amount of media attention at national and local level with the local Police Committee calling for a statement by the Chief Constable. The Chief Constable declined to make any form of statement leaving The New Statesman to conclude;

"at present a Chief Constable is only partly accountable to the Home Secretary, even less to the Police Committee and not at all to the public" (Rohrer, 1979)

The issue of accountability is clearly linked to a lack of confidence in the police and directly to the complaints system which is discussed later. As there were no prosecutions or disciplinary proceedings taken against any officers as a result of the ten week rampage of violence by the police, certain sections of the public were concerned that such behaviour was unacceptable and should be checked.

Like constables, Chief Constables are given powers of discretion to carry out their responsibilities because, whilst they may comply with the law they may not do so with equal weight at all times and in all areas. In fact they



select laws to focus on and organise their priorities accordingly, with no one knowing what they should or should not do. A good example of this occurred in 1980 when Chief Constable of Greater Manchester, James Anderton decided to have a clamp-down on pornography, in what was described by some critics at the time as a personal and moral crusade against the bad in society, albeit that the United Kingdom has the strictest pornography laws in Europe.

Whilst the relative autonomy of Chief Officers seems secure for the moment, new procedures for setting of goals and objectives for the police were established as a result of the Police and Magistrates Court Act 1994. This seems to have shifted slightly the balance of power. The original White Paper for change contained proposals to reduce levels of local democratic representation of the Police Authorities, but in the final stages of the bill this was resisted by the House of Lords. Restructuring of the new Police Authority took the form of one member appointed by the Home Secretary, one member by the existing members of the Police Authority and one member chosen by the local councillors and magistrates. This panel of three would then select a shortlist of twenty candidates from which the Home Secretary would choose ten. These would go forward to the final round when the councillors and magistrates would choose the final five members. This shift in decision making regarding new appointees, represents a move away from influence of local councillors and towards more central supervision by the Home Office.

The newly constituted police authorities have, on the face of it, significant powers, which include determining objectives for the police authority area for the year, called by some a local policing plan. The plan should include a statement of the priorities, resources available and its expected intentions regarding allocation of those resources. All this is done on the advice of the Chief Officer who will prepare a draft policing plan for the consideration of the Police Authority and be mindful primarily of the national policing objectives set by the Home Secretary, as well as local objectives. Among senior police officers there were serious misgivings, causing the President of ACPO, Sir John Smith, to comment in The Guardian thus;

"We are witnessing a move perhaps unintended, for national control of the police by central government" (1994).

These misgivings were briefly stemmed by the introduction of an inquiry looking into 'Core and Ancillary Tasks', in respect of the police. The police have been all things to all people and therefore it was considered necessary,

because of finite budgets and limited resources, to hive off some of the functions previously performed by them in order that they could deal with core policing matters. This sent a further shock wave through the organisation signalling a major step towards the privatisation of certain policing functions. The final result of this exercise produced little in the way of change because, as some critics argue, Treasury driven financial policies should not determine policing priorities. They argue that:

'we risk squandering a policing tradition that, despite its problems experienced in recent years, retains at its core much that is valued by the British public and which is still looked at with envy in countries where the democratic tradition and the doctrine of policing by consent are poorly understood and have few firm roots'(Morgan, 1997, p10)

#### THE PRESENT SITUATION.

The current position of the police and its relationship with the Home Office and the Police Authority appear clear and unambiguous each having a say in how the Police Service should operate. At first glance all looks well until one examines the arrangements and relationships of the structure.

In brief there are some forty one Regional Police Forces with their respective Police Authorities. The Chief Officers (Chief Constables in the case of Constabularies and Commissioners for the Metropolitan and City of London Police Forces) of those Forces are required to control and direct their respective Forces. Their roles and powers are defined by statute, namely the Police Act 1964, The Police and Criminal Evidence Act 1984 and recent case law in DPP v Hawkins 1988.

Since the start of the Metropolitan Police the Commissioner held a unique position in terms of accountability. This position was as follows:

"The Commissioner, a special title for the Chief Officer, has broadly the same duties as a Chief Constable but there is no separate police authority. The Home Secretary occupies an unique role, not entirely synonymous, with that of the traditional police authority, but fulfilling many of the same functions. The Metropolitan Police are responsible for the provision of many national services including protection of the royal family, members of government and other public figures, and diplomats and other people who are entitled to protection by the terms of the Vienna Convention. On a daily basis the (Metropolitan Police) Service has a close liaison with the Home Office" (Comben and Strachan, 1992, p11).

This situation for the Metropolitan Police changed in April 2000 with the appointment of a Mayor and the election of a separate Police Authority for London <sup>1</sup>.

The Tripartite arrangement appears to be split into equal shares. However upon closer examination this is not the case. For example, the Police Authority does not hold the same powers as the Home Secretary, or for that matter the Chief Constables, although the latter appears to wield less power than the Home Secretary.

Recent changes in funding of the police, brought about by the introduction of the Police and Magistrates Courts Act 1994, mean that where previously the police were funded with 51% of the budget by central government this has now been increased to three quarters of police expenditure. National policing objectives and codes of practice relating to the exercise functions of the Police Authorities are now set by the Home Secretary. Police Authorities are now reduced to seventeen members, nine of whom are now elected to sit with 5 appointed members and three magistrates. The chairman and independent members are now locally appointed. The merits of the newly formed Police Authorities are largely in dispute. This is because the government argues that local direction of policing objectives gives far greater control of policing with its increased devolved powers. However some critics argue that:

"the very opposite has been the result with the undermining of local control by the appointment of political policemen and women, the police now being part of the governments quangocracy and the powers held by the secretary of state, including the powers of the purse, mean that we have a national Police Force in all but name". (Morgan, 1997, p55)

So whilst there appears to be minor tinkering with the structure of accountability, the power of the Home Secretary has again increased centrally, at the expense of the other members of the tri-partite arrangement. Police authorities have as one commentator put it, 'little more than a not particularly influential consultative role.' (Reiner, 1993, p43)

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<sup>1</sup> This arrangement changed in 2001 when Ken Livingstone, the Mayor for London, who was appointed in May 2000, will chair the Police Authority for London and oversee the Metropolitan police.

This leaves Chief Officers in the same position as they were prior to the introduction of the Police and Magistrates Courts Act 1994. Chief officers may consent to be accountable but they are certainly not controllable. Accountability and control do not really equate, except perhaps in so far as a post action scrutiny, which may act as a deterrent factor in any future action. Successive Home Secretaries have wrestled with this problem over many years and none has dared to significantly alter the balance of power held by the Chief Officer. Arguments for greater and more effective accountability usually focus on extending functional powers of external review authorities explained in Chapter 1.

#### FINANCIAL ACCOUNTABILITY AND REORGANISATION.

Over the years there has been an increase in levels of police accountability, with attempts at more central control through the imposition of tighter working practices and performance indicators. The many reasons for more central control included financial considerations and pursuit of better value for money.

This has led to financial planning and fiscal control by imposing market testing of police related functions, and in some cases to privatisation of certain working practices mentioned previously. The consequences of this course of action has led to the erosion of individual accountability. The notion of private enterprise is controlled by the need to make a profit; making money the dominant form of accountability that exists in the private sector. Bankruptcy is the final outcome if making money and profit fails to occur. To achieve this, businesses and companies must comply with sound business management. However they must do this within the framework of the legislation which applies to all firms. One of the main problems of privatisation in the police sector appears to be the apparent removal of discretion, especially if work targets are set and performance is measured. A classic example of privatisation is parking control, which has been de-regulated in an effort to raise revenue for Local Authorities.

Another outcome of financial control and restructuring has been the emergence of what may be called the new breed of powerful police managers. Under Sheehy there were several proposals to reduce the number of managerial ranks including Chief Superintendent and Chief Inspector. A number of forces have restructured and the re-organisation has pressurised many middle and senior ranks to resign or retire. The process of change has led to the emergence of the new Operational Command Unit (OCU) head

(the new term for Divisional Commander) which is now a Superintendent. The new Superintendents are now 'resource managers', likely to be the subject of fixed term contracts and performance related pay. They are concerned in the management of their budgets and target achievement under the scrutiny of Senior managers of ACPO rank, to which many of them wish to graduate. Failure to manage their budget will therefore attract censure and automatic non election to one of the most exclusive, powerful and influential clubs in the country. Fiscal regulation will, for some, ensure some measure of operational control which can be seen as accountability through the back door and could mark a return to consensus policing.

#### THE CRISIS OF LEGITIMACY.

The issue of police accountability in England and Wales has raised its head periodically in the recent past. It began to be a matter of concern in the late 1950's and early 1960's but came to the fore again at intervals in the 1970's 1980's and 1990's. In the early 1960's increased media interest in the police together with a large number of high profile and controversial cases and incidents, led the Government to consider police powers and establish a Royal Commission to look into police actions and organisation.

The Royal Commissions terms of reference included a review of ;

“arrangements for their control and administration...(and)...the status and accountability of members of Police Forces” (1965, p6).

Implicitly, the message here, certainly at the political level focused on the legitimacy of the police at national, regional and local levels. The organisation of the police had become ineffective, cumbersome and out of date. Post-war changes in policing requirements, control and political need, forced the Government to take action.

But what is meant by legitimate power and when is it rightful? Beetham argues that:

"The exercise of power by one person over others, or by one group over another, is a basic and recurrent feature of all societies. Those who are subordinate experience it as constraining, often humiliating and sometimes life threatening, and many would escape if they could. Those who hold power, or seek to do so, are themselves frequently at odds with one another over the scope of their power and the control over their subordinates, with potentially damaging consequences. Power, in other words, is a highly problematical, as well as recurrent feature of all human societies. Where power is acquired and exercised

according to justifiable rules, and with evidence of consent, we call it rightful and legitimate" (1991, p3).

Legitimacy exists in a number of dimensions and therefore is multi disciplinary in character - relying on rules, justification and action. These three dimensions are by no means alternatives but all contribute towards legitimacy providing the subordinate with moral grounds for compliance.

The first level of legitimacy concerns the rules of power which are required by most societies to resolve conflict, dispute and complaint about abuse of power. These are both precise and enforceable especially in legal situations. For example public interest ensures that the power to use force has a constraining element of reasonableness which is applied by a court *post facto* to all the attendant circumstances. Therefore the agent of social control must use reasonable force because to do otherwise would be an illegitimate use of the power resulting in a contravention of the rules, and this may render the perpetrator liable to sanction. Public interest is considered to be a reasonable set of shared beliefs that exists between the dominant and subordinate groups. On another level, rules of power will lack legitimacy because shared societal and cultural beliefs have changed.

The final level requires the;

“ demonstrable expression of consent on the part of the subordinate through actions. Consent in modern society is regarded by some theorists as a recent innovation especially routed in a liberal or individualistic or fragmented society. Consent can be more easily withdrawn or withheld as the authority which was historically unchallenged is under constant scrutiny although this notion is not true for other societies” (*Ibid*, 1991, p18).

The theoretical concept of legitimacy has been explained in terms of influence, social control and compliance. Sociologically, legitimacy is concerned with the effect it has on the character of a given relationship, and on the behaviour of those involved in it. Such notions were clearly in the minds of those members of the Royal Commission who in 1962 reviewed evidence from previous Royal Commissions regarding the Office of Chief Constable. The same elements were present when the Government commissioned the Scarman Enquiry of 1981, and the Macpherson Enquiry of 1999, which both considered the policing of race and the investigation of racial incidents.

The 1962 Royal Commission did not wish to tamper further with the issue of accountability, and therefore did not act on the findings and assertions of the 1929 Royal Commission which accepted that control of the Chief Constable

was necessary. However, both Commissions accepted that the Police exercised:

“an original authority i.e., their actions were directed by law not by politicians, yet on the other hand there was a widespread belief that the Police were directly accountable to locally elected representatives”. (Royal Commission on Police, 1965, p 30)

The problem of controlling the police can be restated as the problem of controlling Chief Constables. The Commission had the opportunity of dealing with this difficulty once and for all, but instead sought to increase their power, rather than diminish it. It is highly doubtful whether the tripartite structure set up by the Police Act 1964 has worked in controlling Chief Constables, although recently central Home Office control seems to be on the increase.

The Commission concluded that democratic controls of police were ill defined and asserted that Chief Constables required closer supervision. Nevertheless no further constraints other than those which already existed were placed upon them. The implementation of the Police Act 1964 gave all the outward appearance of greater accountability but in reality the relative autonomy of Chief Constables was guaranteed. Its central recommendations were taken up in the restructuring of the police which sought to amalgamate many of the smaller Town and Borough forces in a way that emphasised the importance of a centralised, co-ordinated and efficient organisation. Put another way, it became a position of *National Police work rather than a National Police Force*.

#### COMPLAINTS AND LEGITIMACY.

As previously shown the lack of public confidence and crisis of legitimacy in the present system of complaints was something to which Lord Scarman made reference in his report into the Brixton Riots. He commented that;

"The evidence has convinced me that there is widespread and a dangerous lack of confidence in the existing system for handling complaints against the police. By and large people do not trust the police to investigate the police"(Scarman, 1982, para 5.43)

The Brixton Riots, and disturbances in most major towns proved the catalyst which caused Parliament urgently to review police complaints and discipline procedures. The early 1980's saw the crisis of legitimacy reach critical mass for the police, leading to the introduction of two Acts of Parliament- the

Police and Criminal Evidence Act 1984(PACE) and the Prosecution of Offences Act 1986.

Instantly, PACE sought for the first time to define a whole range of issues concerning the rights of citizens who were stopped by the Police, the rights of prisoners detained at Police stations, searching of premises and access to legal representation. The intention of PACE was to reduce levels of police discretion by issuing codes of practice that ensured certain meanings, actions and interpretations were tightly defined. These tighter rules meant that any breach of PACE codes of practice could be dealt with according to law and police disciplinary procedures. This process ensured a tightening of the rules which in turn enhanced control over the police and public approval and legitimacy.

The Prosecution of Offences Act 1986 dislocated the police from the right to prosecute offenders, something which the police had been able to do since 1829.

#### DISCIPLINE AND THE POLICE AND CRIMINAL EVIDENCE ACT 1984.

It is worth restating that PACE brought in a standard set of powers for the police which included much of what was previously termed Judges Rules. These were a set of written procedures and directions to police, laid down by judges of the Queens Bench Division and covering a whole range of prisoner related activity. Judges Rules were often being compromised by police on normal day to day routines just to get the job done and even when it was established in court that procedural irregularity had occurred, Judges and Magistrates rarely excluded that evidence unlike court proceedings in America under the Miranda rulings<sup>2</sup>. The sad fact is that evidence obtained illegally or improperly in a number of cases lead to miscarriages of justice. During the 1960 and 70s there were two notable examples of police misconduct, namely the cases of Maxwell Confait and Detective Sergeant Challenor.

These two cases highlighted the unaccountability of the police. In 1972 Maxwell Confait, a homosexual transvestite prostitute, was found murdered.

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<sup>2</sup> The Miranda rulings are procedures which endorse individual legal rights. For example each arrested person must be told their legal safeguards immediately and any failure on the part of police to comply with these rulings renders the arrest, detention and prosecution of a person invalid.



Three boys, one of whom had learning difficulties, were later convicted of the murder based on confession evidence even though all three had cast iron alibis that they were elsewhere. Considerable criticism resulted because the three suspects were wrongly imprisoned due to false police evidence. This matter provoked so much public anger and outrage that accusations amounting to miscarriage of justice were levelled at the investigating team. Judges Rules were not law, so whilst any breach of those rules attracted only minor criticism of police practice, little could or would be done for any transgression.

The second matter caused severe government embarrassment prompting a Royal Commission to consider the issue of police accountability. The case concerned Detective Sergeant Challenor, a member of the Metropolitan Police CID in 1962-3 whose illegality was unmasked when he planted half of a house brick on an educated man who just happened to be resourceful enough to prove his own innocence. When Challenor's other victims had been interviewed, some in prison, twenty four people were subsequently pardoned. Trained officers and systems designed to detect such misconduct had clearly failed. Critics quickly realised that the existing mechanisms for the control of police misconduct were at best ineffective and at worst served as a vehicle for the concealment of abuses either at the level of the individual or of the organisation. One commentator at the time put it thus;

“Challenor's early victims had all been working class people, often black, whose rights the police, the legal profession and the courts had totally failed to safeguard, but for the accident of picking on one person who was able to exonerate himself by his own efforts, Challenor's methods might be continuing today” (Whitaker, 1979, p 254).

As previously mentioned, Judges Rules became an integral part of PACE and as a result suspects, arrested persons and prisoners were for the first time entitled to certain legal rights, which included the instant access to legal representation. Accordingly, breach of the codes of practice in relation to such matters became an offence against the Police Discipline Code (see Appendix 2) and therefore subject to further scrutiny and sanction.<sup>3</sup>

## DISCUSSION.

The notion of accountability has been described at length from differing orientations and viewpoints. Firstly in Chapter 2 the historical narrative

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<sup>3</sup>Code 3b Disobedience to orders- failing to comply with any requirement of the code of practice for the time being in force, under Sec 60 or 66 PACE 1984). (See Appendix Four)

described the situation from early Saxon times up to the formulation of the Bow Street Runners. Next came the period often described as the difficult and tortuous route of developing and implementing an acceptable system of policing. The background described the relationships especially in respect of police discipline and complaints as one form of accountability. Almost from the start of the new police the Commissioners sought to issue written standing orders on a weekly basis which were promulgated to all officers. These formed an ad hoc set of instructions regarding police duty and conduct. As soon as each unforeseen problem arose a new order was issued and passed through the ranks for strict compliance. These ad hoc instructions or rectified errors were seen by many in the establishment as a means of “failing ones way to success”. Accordingly, police discipline was punitive, harsh and balanced in favour of the organisation, thereby allowing for no rights on the part of the accused and little latitude to any infraction.

In the early 1920's, the police became recognised as a professional body with the Home Secretary producing a set of Police regulations which not only placed restrictions on police officers and their families but also gave them certain basic rights. Police Regulations brought with them a new system of discipline which was based on a set of codified rules. Following the implementation of the new police disciplinary system alleged police misconduct was traced through until the present day. The strengths and weaknesses of the present system are rooted in legislation brought in over 75 years ago and the need for change became apparent with the increased professionalisation of policing. Defects in the police framework were highlighted by the Governments “Police Reform” White Paper (1993). This indicated that the freedom of managers was being hampered by the rigid working methods and structures applicable to current disciplinary practices and misconduct arrangements. A consultative document was issued to Police Managers which was later used to introduce new arrangements for police discipline, misconduct and complaints (See also Appendix 10). These included the Police Act 1996 and the various Police (Discipline) Regulations 1999, explained in Chapter 1.

On another level the much debated issue of accountability was traced historically and the tripartite structure of police governance was unpacked and analysed. It showed that the separation of powers located within the triumvirate of Home Secretary, Police Authority and Chief Officer were indeed unequal. The issue of who maintains real power can only be explored within this arrangement when conflict is highlighted within the public arena. The discussion developed a number of points which reflected the view that a truly strange power sharing arrangement exists with Police Authorities

holding the least power of the tripartite arrangement. This is borne out in the various public skirmishes which show that Police Authorities, even under the new arrangement introduced in the Police and Magistrates Courts Act 1994, have no powers of control over the Chief Officer or the Home Secretary. Critics conclude that:

“The relationship (in respect of overt clashes) between some police authorities and chief constables has been (that) the chief has always been observed to win” (Reiner, 1991,p37).

What is notable from this relationship is the fact that there is no evidence that can be gleaned with respect to conflict between Chief Officers and the Home Secretary. This relationship takes place out of public view, and therefore conflict within the relationship is not overt and can not be studied. This two dimensional relationship exists as Reiner suggests:

“Although there have been anecdotes about behind the scene manipulation by the Home Office... these are few and far between...(however)...such influence is a matter of nods, winks and personal phone calls, largely impervious to research”(Ibid, 1991, p37).

This leaves us with the situation where the relationship between the Home Office, Chief Officer and the Police Authorities can only be conceptualised in terms of dominance of power by one member of the triumvirate. In this case, it is the Home Secretary who has the potential to shape attitudes and consciousness, prevent controversies from surfacing, and express unity even when this may not be the case. He has the choice (whether he wishes to use it or not) of helping to put the wheel back on when it has come off. Hence there are no crunch cases, no conflict and therefore no *post facto* analysis of decision making. Accordingly some critics argue that:

“The power is still inferred from indirect evidence concerning the structure and operation of institutions, and the ideologies of members” (Reiner, 1991, p37).

The dominant position of Chief Officers is largely the result of Home Office compliance and policy making re-enforced with the backing of the HMIC, ACPO and Bramshill, the Police University through which all senior officers pass at some stage. The evidence tends to suggest that the dominant ideology of Chief Officers is represented as a fundamentally unitary national elite; one which is created by the philosophy of the Home Office.

Accountability at the level of the law has also been explored within this chapter and apparent police misconduct has been unwrapped to reveal

sometimes frightening levels of aberrant police behaviour. This view has been developed within the context of the criminal, civil, and quasi-judicial processes <sup>4</sup>. The narrative shows the difficulties which exist at the level of the law and police discipline to bring individual officers to account.

On a political level, the changing nature and development of British society and its lower tolerance to sleaze in any form has raised the profile of police misconduct and has caused some commentators to ask “who guards the guards”? These questions have raised once more the issues of democratic control and operational control of police.

On another level the implementation of financial accountability constrains, only in part operational control, although this method of accountability appears not to satisfy some critics - notably the left, who suggest there has been a marked change in policing styles from consensus to military policing (Lea and Young, 1984). To others the compromise of financial accountability has been the constraining feature that has made the most impact upon police.

Chief Officers are judged according to measurable statistics at national level and comparative studies that pitch one force against another i.e. one police area versus another. These are divisive because it assumes a similarity in terms of population, resources and finance. Whilst these assumptions are flawed the attention is focused solely on the quantitative and not on the qualitative aspects of policing. Many chief officers reject the notion of a national league table of policing that purports to represent measurable levels of efficiency and effectiveness. This method of accountability has led to a reorganisation and prioritising of certain policing functions. The process of reorganisation and restructuring have led some critics for example Reiner (1993), to suggest that many police functions are ripe for privatisation and should not be performed by police officers at all. However a recent review of the policing functions and responsibilities reported in the White Paper (1993) entitled Police Reform suggested that, in effect, there would be little change with the nature of policing as we know it. Only some peripheral functions such as lost dogs and property may be privatised or removed to the domain of the local authority. To some critics of the police, this has represented a major climb down regarding control of policing functions on the part of the Government who were keen not to upset the police or the influential pro-police lobby too much.

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<sup>4</sup>Quasi-judicial refers in this instance to the process of police disciplinary procedures.

The question of accountability in Britain has, over the last thirty years shifted from the original emphasis on operational control of day to day functions of the police to the present situation of both formal and informal constraints on the responsibilities of police, its effectiveness, efficiency and value for money. The most important factor in respect of police accountability is, as it is for any State Agency, the legitimacy of State action, and as Tony Bunyan pointed out;

"...the attempt is always made to ensure that force will appear to be based on consent of the majority, expressed by the so called organs of public opinion (politicians, media etc.). In Britain today the legitimation of the actions of the state, together with the perpetuation of the values and beliefs of every day life that support it, have not only the appearance of consent, but have the actual consent of the majority of people in a society where the dominant historical and present day interests are those of the Capitalist class".(Bunyan, 1983, p308)

The police represent the primary manifestation of coercive force on behalf of the state. Each officer is given the right to use force in order to carry out the responsibilities which the office of constable bestows, and the responsibility of each officer to enforce the law and maintain order is a matter for the individual. It matters little that he/she is a beat officer or Chief Officer; the office of constable still maintains discretionary power derived from an original authority, which is not delegated, therefore it cannot properly be the subject of political control. It is within this context that the very difficult question of police accountability has been examined.

On the right of the political divide it is seen that police accountability is owed to the state, whose interests are considered to be coterminous with those of the Government of the day. On the left, however, it is seen as the necessary element in a populist conception of how social institutions are legitimised and therefore something of which ordinary people ought to be in control. The corollary of this notion of course rests with the belief that, certainly as far as complaints against police are concerned, there should be stronger independent or more possibly even civilian oversight and investigation of aberrant police behaviour. This would ensure a transparent uniform system of control in respect of police complaints and would do away with arbitrary and disaggregate levels of decision making on such matters. Certainly in terms of police management any erosion of disciplinary control wrested from police supervisors to outside organisations is considered by them a serious matter which is bitterly resisted. This is because they argue that it reduces the level of control and influence managers have in disciplinary decision making in their respective forces. In effect, it makes managers impotent on matters of discipline involving complaints from outside. However the notion of

discipline has never been entirely removed because not only do senior officers control internal disciplinary matters but they also determine the guilt, innocence and outcomes referred to them by the PCA for disciplinary action. On another, perhaps more formal, level accountability to the individual can only be truly assessed when all complaint statistics are brought together simply in order that decisions on policy may be made after such data is scrutinised and interpreted.

## CHAPTER FOUR

### MANAGING POLICE COMPLAINTS.

#### INTRODUCTION

Many commentators and observers of the police have traditionally been critical of the police complaints system and its inadequacies. The debate has followed *causes celebres* where police failed to live up to expectation, resulting in changes in the law, police regulations and internal policy. These *causes celebres* included those cases like Confait and Challenor (mentioned in Chapter 3) that highlighted the inability of parliament satisfactorily to call the police to account. These matters also raised the spectre of “who guards the guards” and what independent element exists which ensures the police do not become a law unto themselves. The force of this external hazard was not properly understood by police management. The move towards a greater external influence was unthinkable because it meant that the power to direct in matters of police discipline would effectively erode police managerial capabilities (Bunyard, 1978, p46). This caught the police rather by surprise because their traditional and constitutional position was under threat and they didn’t understand why. At first the change was resisted and the effective police lobby was brought into full force to combat the external threat. The challenge to the autonomy of Police Chiefs was at first perceived as a stabilising measure by vociferous minority groups hell-bent on undermining the police. The fact that these groups could be right did not occur to top police managers who through the 1960’s and early 1970’s continued to resist the threat.

In this chapter I set the stage and focus on the dilemma which effected police managers in the post modern and late modern era. I consider the management of police complaints and complainants which treats them not as customers but as irritants and moaners; a situation which has prevailed for some time. The management of change and the movement towards external civilian review, new managerialism and use of complaints as an indicator of police performance are also discussed within this chapter. This has seen the shift of power from control by a due process model of police discipline to one based on bureaucratic managerial accountability. Within these debates I consider the thorny issues of impotent management and the police culture. This chapter also examines the issue of under-reporting and recording of complaints from an organisational perspective and seeks to overcome many of the obstacles. It considers early resolution which has immediate benefits for the image and integrity of this process. The current police complaints

system is failing the very members of the public that it is there to protect, and a more customer - focused perspective must be the way forward. The disadvantages of the process explained in this chapter are used to inform the 'best practice' model described in Chapter 10.

#### THE DILEMMA OF WEAK INEFFECTIVE MANAGEMENT

During the 1960's and 1970's the issue of police management became the subject of public and political concern. In simplistic terms the problem was that society was changing and the police were not flexible enough to change with it. They appeared to be failing and managers were blamed for their inability to cope with those failures. Added to this was the problem that managers were experiencing external pressures to account for expensive resources over which they had only tenuous control. These changes in society included the development of pluralism with an increase in the number of vociferous minority groups, high unemployment, the growth of violence in everyday life and a call for greater representation and consultation by the public at local level for more police accountability (Plumridge, 1985, p173).

The way forward for police was unclear and controversial. The problem for police managers were that these changes tended to disrupt, undermine and de-stabilise society evidenced by the growth of industrial and civil disputes. Furthermore combine complexity and rapid change with control and co-ordination of forty three different police forces with their varying styles, component differences and alternative methods; then one begins to understand the scale of the problem. The need for police management was to move from the old precedent of ensuring the smooth running of a force through positive leadership but also towards effective and efficient management. There is no doubt that the role of police managers has changed in the last quarter century from "bobbies with rank" to "professional bureaucrats" capable of considerable financial acumen, management of resources and control of an organisation directed towards many objectives (Reiner, 1991, p224).

Many management texts from the 1960's to 1980's have completely ignored the subject of public complaints, satisfying themselves with the issue of police discipline instead. The failure to acknowledge the relative power of the police culture, with its imperviousness to innovation and change, was also a central fault of police management. A change in managerial orientation in the mid 1980's began to take complaints against police more seriously, although



this did not last long. On the issue of culture and complaints Mainwright and Smith's advice to middle managers (Inspectors) suggests that;

"Complaints against police arouse passionate emotions. You may have to deal with them in the initial stages against your own men. They expect supporting to the hilt, that is what loyalty is all about, they say, explaining, often with truth, that the complaint is ill-founded, exaggerated or downright malicious. Your wider loyalty to the organisation should overcome personal feelings" (1978, p58).

The police predilection at all levels of the organisation towards ever better results, number crunching and performance indicators has often worked against honesty, openness and integrity. As with offences taken into consideration (TIC's), complaints statistics have been beset with the same questionable procedures whereby recording practices fail to capture the real level of public complaint. Even if public apathy or unwillingness to complain are added to the equation police management are losing out on vast numbers of dissatisfied people who fail to get into the statistics. The failure to count the true level of satisfaction is managerial suicide. Box puts it thus;

"Not all citizens who consider that they have been assaulted by the police are likely to lodge a complaint; consequently official data on complaints, like that on reported crime, are likely to be a gross under-estimation" ( Box, 1983, p88)

Police management must put itself in a position to measure the correct level of public concern, identify any shortcomings and implement any strategy designed to combat the problem.

#### THE SHIFT TOWARDS THE UNTHINKABLE; CIVILIAN REVIEW OF COMPLAINTS

The call for greater civilian involvement and control over police complaints has been a matter which has dogged the nature of policing for nearly forty years. As far back as the early 1960's both the Royal Commission (1962) and the Home Office supported the notion of an independent element in public complaints and investigation, which for reasons explained earlier in Chapter 1 were not implemented. However by July 1969 there was sufficient head of steam expressing serious concern, both publicly and politically, regarding police complaints that an All-Party motion was tabled in the House of Commons which stated;

"That this house.....urges the Secretary of State to amend the Act (Police Act 1964) with particular reference to the need for an independent element representing the public in

conducting these enquiries, the publication of findings in appropriate cases, and to the circumstances in which any recommendations made should be binding on the Chief Constable of the Force concerned.”(House of Commons Notices of Questions and Motions 1969)

Much of the criticism has traditionally focused on who investigates and disciplines the police. Since the 1960's Royal Commissions, Public Enquires and various Home Affairs Committees have concentrated on abuse of police powers and the use of force, the application of internal policy, legislation and the problems associated with the police use of discretion. The consensus appears to indicate that the low visibility of policing, the lack of control at street level by managers and the low complaint substantiation rates all add up to an attitude where complaints are not taken seriously.

By the time the All-party motion was tabled it was more than obvious that the Police Act 1964 was seriously flawed in respect of complaints against the police and specifically in respect of independent civilian review. Pressure was applied to the Secretary of State who appointed a Joint Working Party of the Police Advisory Board. The Board's recommendations included the fact that Police Authorities should develop their supervisory role under the Police Act. In the early 1970's the issue of corruption had raised its spectre causing some police managers to rethink strategies to combat this phenomenon. With this in mind centrally controlled easily managed, single complaints investigation units were formed called A10. This design was modelled and developed by Sir Robert Mark, Commissioner of the Metropolitan Police. The intention to introduce an independent element to police complaints was signalled by the Home Secretary Robert Carr in February 1973, and introduced in the Police Act 1976.

Few observers have tackled the actual process of complaining, nor considered the factors and constraints exerted on a potential protester wishing to make an official complaint against such a strong and powerful organisation. These organisational processes have contributed to an under use of the complaints system and little wonder that recently confidence in the process has forced the current Home Secretary, Jack Straw, to consider seriously a totally independent civilian investigation arm of police complaints.

#### **TAIL WAGGING THE DOG? - THE ETHOS OF NEW MANAGERIALISM.**

New management styles were introduced in an attempt to recast the nature of policing from the maintenance of order and control; a model rooted within

the police culture towards more normative methods (Walker, 1994 p53). A change in the structure of policing was necessary, especially at "Suite level" where new leadership styles were employed to combat the seemingly impervious nature of the police culture. Throughout the late 1980's and 1990's the major innovatory themes affecting the British Police has been the development of "New Managerialism" (Holdaway, 1986; Walker, 1991; Reiner, 1992, Johnston, 2000).

The culture or certain sections thereof were widely perceived to be out of control and measures were required to restrain this style of policing. Much of what passes for policing also passes for police culture which is viewed as deviant, immune and self preserving. In this case the deviance expresses itself through a model which is a reflection of group loyalty. Reiner pointed out his concerns about lack of strong management when he suggested:

"They may feel that, on account of the changing attitudes of recruits and earlier relaxations of internal controls, discipline has already declined to a critical level" (Reiner, 1991a, p244).

Walker suggested that deviant subcultures require a convergence of three specific factors. These are;

1. A framework of personal authority in which the charismatic leadership style of the chief inspires unquestioning loyalty rather than reasoned compliance;
2. A leadership philosophy which attempts to run with the grain of the relatively intransigent occupational culture and so to establish normative consensus on favourable terms to the rank and file;
3. A strong mutually corroborative, framework of professional authority, where the sense of pride and solidarity engendered by membership of a *Corps d'elite* creates orthodoxy of knowledge strongly resistant to external influence. (1994, p50)

Contemporary police history suggests that the Metropolitan Police Special Patrol Group (SPG) possessed these qualities, although other examples of this type of extreme culture also exist. Critics suggest that deviant subcultures thrive on this type of model; reflected in the style of policing, image of the force and the policing philosophy of top down management (Jones and Levi, 1983). The scope of deviance is compounded by weak management, coupled with a buoyant and self protective work group of

individuals who possess a squad mentality. These factors were laid bare in the case of the West Midlands Serious Crime Squad and the decision by the Director of Public Prosecutions not to prosecute because of insufficiency of evidence (Kirby, 1992)

The ideal then is a culture which embodies the value of autonomy, individual utility, nurture and rational consensus. Its product would be an organisation of highly motivated individuals each contributing to the setting and realisation of corporate goals within a climate free from wasteful excess of bureaucracy and the disinformation of an instrumental culture (*Ibid.* p49). Management got tough on internal discipline, corruption and the criminal activity of police officers.

The Conservative Government introduced new financial management initiatives (Home Office Circular 114/1983) to improve police effectiveness and efficiency. The recommendations of the Operational Policing Review (1990) also contributed to enhancing and improving police management. These measures encouraged the development of managerial accountability. This concerned itself with the expansion of personnel and strategic management skills. The introduction of other reforms like the Plus Programme, Policing by Objectives, the Objective Structured Performance Related Examinations (OSPRE) and the revision of Command Courses at Bramshill, all marked a shift in attention devoted to management theory and practice which challenged the military-bureaucratic orthodoxy (Walker, 1994, p53). Fast track promotion schemes like the Special Course and the newly reconstituted Graduate Entry Programme, also underscored the notion that management was to be taken seriously.

New managerialism was committed to a distinctive ideology, discourse and career structure which may have widened the gap between the ranks (Holdaway, 1986) but, as well as ideological significance, it also had a functional implication (Reiner, 1992, p43-5). The new system adopted a top down approach which sought to shift the nature of policing with its ethos of new public management which was being espoused at the highest levels of government, towards strong managerial control. The spirit of New Managerialism projected itself through a number of systems and processes namely the Citizens Charter, the provision of quality of service goals and financial efficiency. Prior to the 1990's the police were committed to strong notions of internal discipline. However they were not equally committed in the same way to complaints made by citizens which needs the strong hand of management. The influence of new managerialism to complaints and discipline is evidenced in a number of ways, not only through legislation. In

February 1993 the F3 Department of the Home Office issued an extensive consultative document entitled, "Review of Police Disciplinary Procedures" to police managers, senior officers and other interested parties. This document, which was the fore-runner to the Police Act 1996 and associated Police Regulations, in effect removed many of the obstacles which prevented Senior Officers dealing appropriately with misconduct. It introduced a two tiered system where local managers could deal with minor matters that identified poor quality and ill - disciplined officers. The scope of the paper covered unsatisfactory performance and minor misconduct which proposed a move to more local control by management in an effort to resolve issues quickly and appropriately.

New Managerialism introduced internal emphasis on control measures like rules procedures, records, supervisory mechanisms and the like, which did not guarantee conformation although they are by no means ineffective (Johnston, 2000, pp86-87). This new managerial style sought to re-establish control of internal police discipline and enhance public accountability of police with its widespread cultural expectation (Walker, 1994, pp49-50). These new managerial systems fail to address the concerns of civil libertarian who have often voiced their disquiet at the inadequacy of external, let alone internal, checks and balances as a means of accountability.

The 1990's have seen the abolition of many traditional, fundamental rights of police officers which, amongst other things, replaced the outdated 70 year old Police Discipline code with one based on an ethical code of conduct. The right to silence in criminal matters, double jeopardy and the criminal level of proof in disciplinary matters have all been amended or abolished. Police management also got tough on police sickness absence and a structure was put in place to monitor, regulate and control the process. The control of deviant subcultures require strong management, strong managerial tools and an effective system to deal with matters when they go wrong.

#### MANAGING AND EVALUATING COMPLAINTS AGAINST POLICE - SATISFACTION LEVELS WITH POLICE BEHAVIOUR.

The police pride themselves on high standards and traditionally their image appears to have been generally a good one, well supported by public opinion. However cracks in that image became apparent in 1990 with the publication of quality of service levels by the Home Office <sup>1</sup>. Skogan (1990) showed that

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<sup>1</sup>Public satisfaction levels with Police Services were published in 1986 and 1990 by the

whilst 85% of people felt that police were doing a fairly good or very good job, the survey reflected a drop of 7% over the same outcomes published by Southgate and Ekblom (British Crime Survey 1988). In 1992 Southgate and Crisp published their survey results which continued to show a downward trend, resulting in an 84% satisfaction rate (Home Office Research and planning Unit paper 73). Recently a variety of opinion polls have shown mixed results with the Daily Telegraph/Gallup poll reporting in February 1999, showing a 58% satisfaction rate with London being lower than for the rest of the country (MPS Public Attitude Survey 1998) <sup>2</sup>.

The surveys suggest that the general public's perspective regarding quality of service is decreasing. Reduced confidence in police has implications for the notion of policing by consent. Perhaps the reason for this rests with the fact that police do not have most contacts with the general public, who are the majority of the surveyed sample, but with victims, suspects or onlookers at the scenes of crime and disorder.

Ethnic disputes in dissatisfaction has been measured through various studies and research surveys which report similar findings to national satisfaction data. For example, the Home Office study of Moss Side entitled Ethnic minorities, Crime and Policing, (1981) by Tuck and Southgate, found high levels of serious dissatisfaction (16%) with police behaviour, especially amongst West Indians, although none had used the formal complaints mechanisms. The report outlined the low levels of white dissatisfaction (8%) stating also that West Indian complainants lacked specificity, tending to over generalise with their complaints.

The PSI report also found an ethnic disparity in terms of complaints in its survey of Londoners in 1981. West Indians stated that they were less likely to make a complaint against police if they had a grievance (79% compared to 90% of whites and 88% of Asians).

There is evidence to suggest that some people either just can not be bothered or are fearful of the consequences of their actions when it comes to co-operating with the police. Wilson made the observation that in the USA the public are at best uncooperative and at worst hostile (1968); perhaps they lack sufficient information or are ill advised, which creates this feeling of

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British Crime Survey as an ancillary study to the 1984 and 1988 research.

<sup>2</sup>There are difficulties in data analysis because gradually, as time has progressed, the sophistication of some surveys have not generally allowed for accurate comparison so the conclusions drawn must be taken cautiously.

apathy. This indifference seems to transcend normal relations with the police and is evident in terms of making complaints. Russell alluded to the feeling of apathy by saying;

“About 14% of the citizen survey could be classified as apathetic potential complainants, that is, they could just not be bothered to become involved in the detailed procedures of making a complaint” (1994, p52)

Whilst it is not possible to consider the specific questions asked and the methodology employed, the general message of declining confidence is clear and apparent to all: that the trend in public satisfaction with police services is downward. None of these polls considered public satisfaction levels regarding the police complaints process.

#### PROFESSIONALISATION OF THE POLICE.

Uildriks and van Mastrigt (1991) contend that the managerial control is bound up in the concept of police professionalisation where voluntary self regulation is the key concept (p181). The expectation of professionalism is guided by the shared, specialised and highly developed body of knowledge which Klenig describes as “ a serviceable knowledge or expertise which others lack” (1996, p43).

The concept of professionalisation follows the view that the essential ingredients focus on controlling the police through exertion of internal regulation, via higher levels in terms of skills, knowledge and ethical standards. For police officers this means that their actions should not be judged solely in terms of legal standards but within broader professional standards, for example the legal rules concerning the use of force are somewhat vague in nature and open to ample scope for debate and disagreement on legitimate use. Bittner (1983) described these broader professional standards as *workmanship*; these being the minimum standards expected from the police. Uildriks and van Mastrigt agree with Herman Goldstein who contended that;

“What is really at issue in these terms, is the propriety of (a policeman’s) action (a) in terms of simple courtesy and good public relations and (b) in deciding whether he should do what he clearly has the power to do”. (1967, p162)

The probity of a policeman’s actions are governed by ethical standards of integrity, where minimum force is the norm and infractions are dealt with by

the profession. Professionalisation is power and status as it entails the control of money, budgets, authority, esteem, autonomy and monopoly. This notion implies a spirit of self interest and survival - meaning that aberrant police behaviour is judged between the positions that reflect a minimum ethical code of behavioural standards. These set the level of discipline - and the legal standard of "beyond reasonable doubt" is arbitrated against the criminal standard of proof .

Uildriks and van Mastrigt considered the professionalisation of policing in England and Wales in an institutional context and they acknowledge the improvement in the training of suitable leaders for the future. They discuss the merits and demerits of positive and negative discipline with their juxtapositions of blame culture versus learning culture. They conclude that negative disciplining is authoritarian by nature but positive disciplining allows for the principle of learning by mistakes. Rather than trying to find someone to blame, positive disciplining concentrates on looking at the processes and factors that determine what went wrong and remedying the situation (*ibid*, p191).

It is the strict application of ethical standards which the authors maintain is the remedy to controlling police misconduct. Minimum professional standards determine a person's suitability to continue as a police officer where an established code of conduct seeks a behavioural standard to emulate. The authors standpoint suggests a top down approach to tackling the problem of police violence by re-casting acceptable practice into ethical principles when dealing with the public.

Uildriks and van Mastrigt highlight many of the problems of the Scottish system of police complaints; a situation which they successfully argue is mirrored south of the border in England and Wales. Firstly, they explain the specifics of how to implement a strategy of conciliation by increasing professionalisation of complaints management. This introduces a formalised intermediary system that attempts to break down the barriers of confrontation between both sides.

This methodology stressed co-operation between investigators and complainants by implementing a pro-active approach that attempted to resolve the specifics of a complaint, to the complainants satisfaction. It allows the complainant more influence, power and control where there is a better chance of reconciliation. This minimises dissatisfaction and disappointing expectations among complainants.



Secondly, the dual issues of internal and external accountability are discussed. On the issue of internal accountability Reiner had argued earlier (1986) that it is voluntary self regulation or internal accountability that makes professionalisation so appealing to the police, as an alternative to other forms of accountability. Uildriks and van Mastrigt are not optimistic when considering internal accountability as it relies on top down policy making which they suggest is influenced by bottom up consultation. This they argue is likely to constrain and exclude any essential reform especially as;

“occupational audiences afford settings where the police can hold each other accountable for implementing optimal policies for prevention of and adequate reaction to occurrences of police violence” (*ibid*, p213).

It is the nature of police professionalisation that affords little internal accountability because it allows for occupation groups to assert power in the sense of autonomy from public or government control (see Lustgarten, 1983).

Thirdly the issue of external accountability is also considered, with the suggestion of enhanced independent external civilian review. This, the authors argue, should apply to the investigation of complaints in the event that a complaint can not be reconciled to the satisfaction of the complainant. Their major argument lies in the partiality of investigations and the rigour applied to each case. Uildriks and van Mastrigt provide evidence contrary to PCA self-assurance by suggesting that the nature of the investigator’s role is unnatural and disliked by them. There is also a suggestion of rank pulling in terms of final reports and outcomes. The authors suggest a greater role on the part of the Police Authority over the police which, with greater knowledge and additional expertise would become a useful medium of external review. Additionally the authors suggest the appointment of an independent assessor at the intermediary stage where he/she is in a good position to discern more structural patterns of police misconduct.

The authors tackle the issue of complaints, and especially those involving police violence, from a perspective which subscribes to the prevention of deviant action through increased professionalisation of the police. This concept supports the notion that improved interaction with the public only comes about through managing standards. The increase in knowledge, skills and the establishment of a code of ethics lies at the centre of Uildriks and van Mastrigt’s work. The authors suggest remedies to the nature of the complaints process by introducing early intervention in the system, and bolstering an external review that contributes to the enhanced confidence in the process by anyone who uses it. This seeks to not only allay public

grievances in a constructive way at an early stage, but also to provide a system where public satisfaction is paramount.

#### PERFORMANCE CULTURE - THE POLICE FASCINATION WITH NUMBER CRUNCHING.

The importance of results in police-work where outcomes were seen as a measure of police performance was originally identified by Skolnick (1966). He suggested that policework which employed corner cutting in terms of efficiency to achieve results consequentially strengthened the internal police administrative machinery and satisfies outsiders. Police action is often thwarted by constraints and restrictions which ensures a balance between appropriate and fair treatment of citizens against overzealous policing methods. These constraints are present to protect the civil liberties of the individual - which are perceived by the police as an unnecessary hindrance to their job. This is because the police believe that their special knowledge often allows them to judge correctly those who are guilty of criminal offences. These obstructions threaten the craftsman-like conceptions of self which induces a negative attitude towards the due processes of law.

Prior to 1976 there was more of a chance police could “consume their own smoke” by secretly internalising the whole process and ensuring that embarrassing matters did not reach the public domain. Under such circumstances this meant that the police were only really accountable to themselves. The Police Act 1976 introduced for the first time the independent scrutiny of police investigations and complaints; significant factors which upset many Chief Officers because it interfered with their role of managing discipline within their individual forces. It also meant that many of the incidents which as a matter of course wouldn't have become public knowledge stood more of a chance of being publicised and reported. Although begrudgingly, this marked the start of a more open system of policing.

Police managers have frequently wrestled with the dual problems of managing complaints and discipline. Attempts to improve managerial professionalism have caused the Home Office and ACPO to glance towards business applications in order to help solve them. It is true to say that police management have fully embraced business concepts.

The police organisation is a performance culture, a factor which largely came about as a result of the Financial Management Initiative (FMI) in 1982 and

Home Office Circular 114/83 briefly mentioned earlier in this chapter. This new initiative required objective setting, devising and applying indicators and measuring inputs and outputs relative to those objectives. Some indicators include the counting of complaints and stop and search data. However, some have argued that the models of objective setting are inappropriate to the policing function (Waddington 1986a) and measures of performance may actually conflict with the application of police work because of the need to produce “figures”. The PSI report underscored this assumption but for opposite reasons, by saying that;

“ it is believed that figures are a bad criterion of performance and that the use of such a criterion leads to unnecessary or unjustified arrests and stops” (Smith and Gray, 1985, p344-5).

It is strongly suggested that stop and search statistics are removed from the list of performance indicators for all police forces,<sup>3</sup> not only at the level of the individual officer but also at station and force level, and that a more robust system of recording stops and searches is implemented which fairly and accurately provides a true picture. Additionally some internal monitoring and further questioning research may also be necessary. This strategy should remove the pressure on police officers to achieve quotas and produce quality rather than quantity.

In the last ten years there has been considerable debate focusing on police performance, and senior police managers have cast around for models or tools available to assist them in their role. This led many Senior Officers to develop strategies that pursued business excellence in the police context. There have been a considerable number of these management strategies which have included the three E's (economy, efficiency and effectiveness) P.I.s (Performance Indicators), Chartermark, Investors in People, TQM (Total Quality Management) Benchmarking, QA (Quality Assurance) ISO 9000 and BEM (Business Excellence Model). The problem with many of these models is that they are solely driven by strong quantitative elements that seeks to save money often at the exclusion of qualitative service provisions.

In 1998 the Metropolitan Police took on the concept of BEM whilst the Home Office were pursuing its own 'New Public Management' strategy with its introduction of 'Best Value'. Currently the New Labour government are

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<sup>3</sup> The Metropolitan Police placed a bar on counting stop and search as an indicator of performance in 1997 (Fitzgerald 1999 pv)

suggesting the two policies are compatible rather than conflicting. The difference between both models is explained by one observer as;

“The BEM and Best Value regimes ask different questions of police forces and focus on different outcomes. The former is about organisational development and continuous improvement. The latter is about service delivery and accountability for spending public money. Whilst it may be that an organisation has to develop in order to become more efficient and less wasteful of spending public money, the two issues are not inevitably connected ” (Harfield, 1999, p318).

The Metropolitan Police Service (MPS) uses the BEM model when considering service delivery - usually at the sharp end of policing - for example in Operational Command Units (OCU's) which, since April 2000, are now organised along Borough Lines. The BEM model lays down a number of criteria which are all used to develop a system designed to successfully deliver a service to the public.

This seems to be a sensible managerial strategy which should ensure customer satisfaction at the service delivery end of policing. It fails to address organisational policy on the recording of complaints which has remained unchanged. Therefore, if organisational policy remains the same this surely must hamper the efforts of personnel who try at ground level to deliver a better service to the public. Furthermore what about the management strategies of the remaining forty two other police forces in England and Wales? The likelihood is that many of them are developing older management strategies.

#### POLICE ATTITUDES TOWARDS COMPLAINTS AND COMPLAINANT.

At the beginning of this chapter public attitudes to police services were discussed in general, especially with regard to quality of service. In this section the police perspective on complaints is discussed as there is a particular attitude that police practitioners have on this issue. On the whole complaints against police have traditionally been viewed in a negative and irritating manner. Ken Russell makes this observation when he refers to the initial recording of complaints thus;

“ From the police point of view there is a conflict over the recording of complaints. On the one hand keeping complaints figures down to a minimum by not recording some, then police time is saved which can be devoted to more productive tasks. Also, increases in the number of complaints may produce adverse comments from legislators and the mass media” (1994, p87)

The mechanism that measures complaints as an indicator of performance may be at fault as under-reporting matters compromises the probity and efficacy of the system. This is explained by considering the mechanisms of complaints investigation and management from a police perspective. For example, when a visit is arranged to see the complainant this may take place either at the complainant's home or at a pre-arranged time at the nearest police station. A conscious strategy may often be employed to dissuade the complainant from making their valid complaint(s) in order to avoid recording them. If this fails, an attempt at informal conciliation is tried if the circumstances of the case permit. Immediate and informal local disciplinary action is often offered and/or sometimes preferred by irate complainants as an instant solution in return for not making an official complaint. Very often complainants just wish to sound off to someone in a supervisory position and this is sufficient to satisfy their intentions.

The pressure on second line supervisors is immense, as it may be the responsibility of the Inspector or Chief Inspector to resolve or avoid recording a complaint. This is crucial because as a measure of performance, he/she is aware that it reflects badly on the reporting officer, the individual police officer, the station, division and ultimately the Force. The fewer the complaint allegations made and the better those matters which can be resolved quickly, the more regard middle management supervisors have for the abilities of that officer. Their immediate supervisors will be critical of him/her if a successful avoidance strategy is not employed and this may reflect badly on their future promotion prospects. Furthermore, complaints experience would be reported on an officer's Annual Appraisal report and their successful resolution and avoidance indicates a positive quality.

A report published in 1996 by Her Majesty's Inspector of Constabulary, (HMIC) to the Home Secretary showed that it was satisfied with the national picture on complaints against police, it said;

“If one considers the nature and frequency of the contact between police officers and members of the public, I believe that the level of complaints (23,590 complaints for that year) is remarkably low.” (p1 13)

Corbett and Maguire alluded to this notion as the “hidden figure” of complaints in their investigation of the Complaints system, when they stated;

“Officially recorded complaints represent only the tip of the iceberg of public satisfaction or annoyance with the behaviour of police officers. Published figures are a product of a filtering process, in which, at each of a series of decision making stages, some

incidents which might have generated an entry in official records disappears from view” (1991, p53).

Indeed the numbers of reported complaints appears very low but this pre-supposes that all dissatisfied people will use the complaints process with equal confidence and that the police will investigate the circumstances impartially and vigorously. These presumptions are inaccurate and the figures hide the true feeling of public dissatisfaction.

In the same report the HMIC was critical of complaints management in many forces highlighting the ad hoc nature of complaints management information systems amongst all forces and the insufficient training provided in the avoidance of complaints (HMIC, 1996, p114). Quite what complaints avoidance measures are may only be revealed by publishing internal policy documents and HMIC internal memoranda to Chief Officers once inspections are complete. This appears to raise questions that the police are not a learning organisation and that good practice sharing is non-existent. The underlying issues of customer satisfaction appears not to be an issue for HMIC inspections. Furthermore the issue of information technology and complaints management by the individual forty three Home Office forces is clearly a problem perhaps born out of the nature of local policing. This could be a matter which should be addressed at national level.

#### MANAGERIAL DENIAL OF COMPLAINTS.

In Chapter 1 I considered the literature on the denial of complaints and the specific variables that were brought into play to discredit and deny complaints or complainants. Here we consider why this happens. Uildriks and van Mastrigt (1991) accepted that police violence was culturally rooted in the operational code of police work. It was the operational code that allowed the violence to occur - a factor which justified the behaviour as a condonable, logical and acceptable practice (*ibid*, p179). The lack of any feedback mechanism for management to measure the extent of police violence, as was highlighted by Uildriks and van Mastrigt, could deny complaints by saying;

“There seems to be a widespread tendency for the police management to react defensively to allegations of police malpractice. The standard reflex response is apt to be denial, or at best acknowledgement of specific incidents which are then attributed to the unavoidable ‘rotten apples’ present in the force” (*Ibid*, p180).

The authors basic tenet concentrates on managerial collusion occurs with an acknowledgement of managerial awareness to police violence. This behaviour was condoned and considered essential in carrying out the

dangerous role of policing. The first hurdle for management should be the realisation that police malpractice exists and not to deny its existence. The authors suggested that as the rooting of police violence is located within the culture, it should be that the police with their special knowledge are best placed to deal with their own problem. They see this as not attempting to undermine but instead to shape the police culture (which they consider essential in combating crime) and the operational code and to engender a sense of respect for citizens, citizens' rights and peer groups where rough and violent practice is not seen as legitimate practice (ibid, p181).

#### DISCREDITING FACTORS.

An examination of the individual processes of police decision - making is an important indicator of the seriousness with which police take complaints and complainants. These decisions are explained in terms of characteristics employed by the police themselves as receivers and investigators of police misconduct that deflect criticism away from themselves. This methodology has in the past ensured with a great degree of success and often safeguards them from the public spotlight which fuels further criticism.

Box and Russell's (1976) study Complaints against the Police, cited a number of aggravating circumstances which discredited or denied the creditability of a complaint. These, they referred to as "discrediting factors" thus;

"At the risk of stating the obvious, policemen have good reason for either attempting to dissuade a citizen from complaining, or constructing an account of the events which denies, excuses, justifies, or otherwise explains the alleged police misconduct" (1994, p62).

This is so especially if recorded complaints are seen as a determinant of police performance on an individual, regional or force basis.

These factors all tended to neutralise or condemn the complainers by discrediting the plausibility of their individual accounts. By their very nature, officers are very skilled and experienced at the variety of techniques which they learn from socialisation within the culture to undermine the credibility of a complainant, thereby reducing the chances of substantiating the allegation (Russell 1994). The application of these discrediting features are applied both overtly and covertly and either at the point of complaint or at the exit stage when the investigator is finalising the paperwork. It is worth re-emphasising the list of, not necessarily discrediting, factors as follows;

- i) whether the complainant was arrested;
- ii) prosecuting potential of the complaint;
- iii) past or present evidence of;
  - a) mental illness,
  - b) previous convictions,
  - c) on mind altering substances like drugs or drink
- iv) lack of verification;
- v) social class, status or race

All these factors provide for an index of discredibility that is useful in blaming the complainant for previous behaviour rather than the deviant police officer. In Russell's 1976 study (revised in 1994), the writer was unable to explain why three fifths of complaints reviewed showed no discrediting factors at all. Russell stresses the reasons in the following;

“.....no mention has been made of the complainant's racial or ethnic background. Had the complaint files of other police forces where a substantial minority or immigrants and coloured British been examined, evidence may have been discovered that race or ethnicity were all capable of being viewed by the police as discrediting the complainant” (1994, p71).

Certainly, whilst dissuasion tactics are employed by the police sometimes the unhappy experience was sufficiently bad that almost nothing can convince the complainant to withdraw the allegation. Maguire and Corbett explored this area and enquired into complainants perspectives. They said;

“While there are always some complainants who will not be diverted from their purpose, the number of complaints recorded has considerable elasticity, dependent largely upon the responses of middle ranking officers (influenced of course by force instructions and informal policies). Our best guess is that at least one in three people who make a definite attempt to complain are dissuaded (for good reason or bad) from doing so, but that the proportion varies widely between forces and between individual police stations” (1991, p55).

Indeed, ACPO acknowledged the shortcomings of the complaints process in 1990 with the publication of its Strategic Policy document that quality (not quantity) of service should be of primary importance to each officer. However this appears on the face of it only to affect the service delivery end and not to affect outcomes at an organisational level. Quality assurance inspections were carried out on some complaints documents yet efforts were



hampered because proper analysis systems were not in place. As one police officer put it;

“Complaints are an invaluable tool to assist managers in improving service to the public, but the present system of receiving and dealing with and analysing them is inadequate in most forces. Much potentially valuable information is lost while it is impossible to draw reliable conclusions from the data which is available”. (Cox, 1991, p749)

There seems to be a public lack of confidence regarding the complaints process which contributes towards the hidden figure of complaints. Why is it that people do not have the confidence to complain against the police? Is the answer simply that the police and police managers are reluctant to hear complaints and do not take complaints seriously or is it that the public are apathetic when it comes to taking any form of action against such a powerful organisation?

#### CONCLUSION.

The issue for the public is simple satisfaction in the long term. On the one hand, many people consider that it is far too difficult to convict a police officer and cite evidence of under substantiation, discrediting factors and a culture of denial which produces apathy and a ‘why bother’ attitude. On the other hand adequate protection should be afforded to the police against those people who persistently complain against police without good reason, or strategically use the complaints system to sustain an advantage in court proceedings.

The new Police Act 1996 and the Police Regulations 1999 gave police managers additional powers to sack corrupt officers quickly via a fast track procedure, a system used to deal with lazy police officers and a change in the balance of proof. Additionally local police managers were delegated the responsibility to discipline their own errant officers involved in minor matters quickly. The Act also substituted the 79 year old legalistic discipline code and replaced it with a more modern and professional ‘code of ethics’ making police misconduct easier to prove.

The end result should be either to treat the complainant with sensitivity and provide a satisfactory explanation or to try to put right an injustice. Police should encourage complaints, because how well they perform determines the quality and the delivery of satisfaction. The suppression of complaints leads

to negative conceptions of the police and the likelihood of large scale discontent at a later stage. This manifests itself in calls for further changes in the balance of police accountability. The detracting elements of complaints management have been exposed and these aspects have been incorporated in the making of the proposed 'Good practice model' shown in Chapter 10.

Over recent years the model of police complaints has stayed largely the same. With public disapproval and political will, considerable tinkering and adding to the system has attempted to placate public concerns. What is clear is that the system does not enjoy the confidence of the people who have had experience of it.

## CHAPTER FIVE

### THE POLICE AND ETHNIC RELATIONS

#### INTRODUCTION

Let us not forget that the effectiveness of the police depends crucially on the support given from the public. Whilst there may be a positive correlation between levels of support and consent this does not necessarily mean consent is granted automatically, because there may be divisions within society which support the institution in principle but possess degrees of underlying mistrust. In the main the British Police enjoy a popular and favourable image and they are thought of by many to be the best in the world.<sup>1</sup>

At home this halcyon view depends on who one talks to. The British Police is generally a popular institution which appears to have greater regard for individuals rights than most other similar organisations (Brogden, 1982). There are certain sections of the public that view the police negatively and those minority of people, most of whom are relatively powerless, directly experience an unacceptable face of police work. This ugly face is carefully concealed from the majority of respectable citizens who instead are presented with a media projected image of police which is both partial and idealised (Chibnall 1977; Christensen, Schmit and Henderson 1982; Hurd 1979). Box further adds that:

“Not only does this image obscure the wider political and necessarily repressive function the police fulfil...but it mystifies the extent and nature of police crime against particular segments of the public” (1983, p80)

Some sections of society view the police as representing the physical manifestation of the Government in power. They may legitimately resort to the use of force in pursuit of order, maintenance and upholding the rule of law. Therefore for them the legitimacy of the police means sanctioned and lawful authority, not only for the police themselves, but also for the Government in power. This view is at odds with some commentators who

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<sup>1</sup>In his book 'Crime and the Police' Anthony Martenson (1953) described the British Police thus " the police forces of Britain have the reputation of being the best in the world" see also Weinberger B (1995) The Best Police in the World. Scolar Press, Aldershot.

argue that the police represent the notion of the civilian in uniform, leaving Reiner to comment:

“the insistence on suppressing indications of overt political control or partisanship soften the initial conception of the police as a tool of government oppression”. (1992, p67)

In recent years the question of race has emerged as one of the critical issues in debates about crime and policing. Some critics argue that black communities are over-policed and that this attention results in the over representation of black people in crime data. To others high crime figures represent a black crime wave. This chapter considers the current debate which focuses on the relationship between the police and ethnic minorities.

In order to understand the nature of policing diversity today it is also essential to explore the origins and development of black and Asian history in England and Wales. Let us turn to the history of policing black people.

#### THE HISTORY OF POLICING BLACK PEOPLE.

In the early part of the 17th century there was a small black population in Britain. This consisted mainly of domestic slaves who were brought here against their will. From the 1650's the numbers rose steadily (Fryer, 1984) There were also members of the Asian community residing in Britain in the 17th century who were brought to Britain from their distant country as servants, although there were some free Asians who advertised their availability to work. An important point to understand however is that not all Asians were in fact servants.

The development of the British Navy and the extensive maritime tradition of Britain meant that ports like Bristol, Liverpool, Cardiff, Tyneside and East London became the entry points for immigrant labour and refugees seeking employment and accommodation. It is also within these locations that the enforcement of British imperial immigration policy was played out. In fact in early part of the 19th century many immigrants, particularly blacks, Jews and the Irish came to Britain. The relationship between ordinary citizens and immigrants led the latter to be perceived as criminals, a fact pointed out by some commentators:-

‘The idea of linking immigrants to crime, unruliness and disorder is by no means a novel one. The Irish in the 19th century and the Jews between 1880 and 1914 were popularly associated with habitual criminal activity, and moral panics were generated

about foreigners and aliens, premised on racist caricatures' (Cashmore and McLaughlin, 1991, p10).

The Special Restriction (Coloured Alien Seaman) Order 1925 required that immigrants had to register with police if they could not produce evidence of British Citizenship. It fell to the police as agents of the state to ensure order was maintained in the black 'colonies' which built up in the seaport towns. The idea that immigrants, particularly black immigrants, posed a threat was caused by their mere presence, and led the government and wider society to over - police the areas they lived in.

"The black presence continued to be a vexatious one, fears over the consequences of the black presence were manipulated and utilised and there were continual allegations of racist police behaviour" (Ibid, 1991, p23).

The additional attention given to black communities soon led to strained relations with the police, a factor which continued into the post war years.

Migrant workers from many of the British Colonies were attracted to Britain in the 1950-60's by the expanding economy and the offer of jobs. The realisation of a better standard of living, excellent job opportunities and a relaxation of Immigration rules were huge incentives to emigrate to the United Kingdom. Britain was suffering from a shortage of labour and workers were required to help rebuild the infrastructure and economy. Workers coming to Britain from Europe from 1945-50 totalled some 300,000 which did not include 128,000 Polish ex-servicemen, 100,000 Irish people and an additional 85,000 from Eastern Europe to supplement the workforce. So when the *Empire Windrush* docked at Tilbury with 492 Jamaicans this heralded a call that mass black immigration had started, when in fact the truth was by 1958 only 125,000 people had immigrated from the Caribbean. It was not until the mid 1950's to the mid 1960's that migration from the Caribbean and later the Indian sub-continent began to happen with people arriving in large numbers (Bowling, 1998).

The domination of the colonies through aggression and assimilation have caused some critics to argue that the police have adopted the role of colonial governors (Howe 1988) and that policing practices are derived from the model established in the colonies (Cashmore and McLaughlin, 1991). In this analysis the historical picture of policing black communities emerges as one of surveillance, harassment and repression. Emphasising this point, when rioting broke out in Nottingham and various parts of London in 1958, one

commentator Herbert Hill, the Labour Secretary of the National Association for the Advancement of Coloured People, in 1959 said that:

“I was disturbed at the many allegations against the police. The coloured people in the district are upset and anxious about the abuses of police power. (Furthermore) one is given a sense that these people feel completely deserted, and that, if effective and reasonable forms of protest and redress are not provided, irrational forms of protest and explosions of anger are inevitable” (New Statesman, 9th May 1959, pp 635-6).

The police have often used the threat of alleged black anti-social behaviour to fan the flames of fear among the population, and to root the causes of much violent crime within the black community. They have been ably assisted in this task by the media who were always keen for a story and careful to interpret and report events within the context of a conventional view of the world which saw black immigration as problematic. Historically therefore, the issue of the reporting of minority interests has not been best served by the media. In fact racial issues have often been treated very negatively, a factor which in turn influenced and moulded public opinion with regards to black people in this country.

The public ideological discourse on the issue of race in Britain, certainly up until 1979 meant that blackness was associated with second class citizens and undesirable immigrants. So the popular opinion was “the fewer there were the better” (Ben-Tovim and Gabriel 1982). The political consensus focused on immigration, which kept black communities in a state of insecurity and subjected them to harassment from state agencies like the police. During any dispute with black and Asian immigrants police would use discretion in dealing with the situation which often amounted to arrest in apparent contravention of the Immigration Act 1971. Much of the literature regarding relations with police and ethnic minority groups supports the fact that nearly two decades of official restrictions on the presence of black people’s entry to Britain has resulted in a build up of popular racism and the continuation of colonial policing.

#### COMPLAINTS, DISPROPORTIONALITY AND BLACK PEOPLE

In 1962 the Royal Commission considered the role and functions of the police and published the results of a National Opinion Survey. This showed that there was an over whelming vote of confidence in the police. Seemingly however, over the last 30 years police/public relations have deteriorated significantly, with a number of studies reporting considerable levels of dissatisfaction with the police (The British Crime Survey (BCS) by Hough

and Mayhew 1983), (The Policy Studies Institute Study (PSI) by D. Smith and J. Gray 1983), (The Islington Crime Survey (ICS) by Jones *et al* 1986) and (The Merseyside Crime Survey (MCS) by R. Kinsey 1985). For example in 1975 93% of adults either liked the police very much or quite liked them (Belson 1975), whilst by 1992 satisfaction rates seemingly declined with three quarters (75%) of those sampled rating the police as doing a fairly or very good job. (Southgate and Crisp, 1992).

Gradually, as the tranquil but short lived golden age of post - war policing gave way to friction, conflict and hostility, heavy handed policing soon propelled the police into crisis. By the 1980's this had manifested itself into a downward spiral of deteriorating public confidence in the legitimacy of the police and the question of accountability had been raised at academic, institutional and political levels. Much criticism was levelled at their door because of the way they policed demonstrations, civil disputes and industrial actions. Furthermore the manner in which black and Asian communities were policed also attracted condemnation and complaint.

In attempting to justify police action and high levels of complaint from minority ethnic groups as a result, the police tended to focus on the apparent black crime wave. They do this from time to time by way of diverting attention away from themselves. Often this condemnation is directed publicly in the following terms;

“..... blacks are disproportionately involved in crime and (are) quick to complain when they have misunderstood normal police activity. Additionally they feel that blacks make trivial and malicious complaints in order to counter prosecution.” (Home Affairs Select Committee minutes of Evidence 1971-2)

In responding to these comments the ethnic minority community would suggest that arrests are made to counter complaints (Stevens and Willis 1981).

The police complaints system is an important indicator of accountability, albeit not the only element. The study of ethnic minorities and police complaints conducted by Stevens and Willis for the Home Office in 1981 specifically concentrated on the Metropolitan Police over a period from 1970-1979. They examined statistics governing all complaints and considered substantiation rates, complaints made by prisoners and examined the circumstances under which assault complaints arose.

They showed that between the two dates, complaints against the police rose by 60%, even though the population within the Metropolitan Police District (MPD) declined during this period. Whilst this reflects an apparent increase in multiple complaints, this may be due to a change in counting rules which occurred in 1977 with the introduction of the Police Act 1976 and meant that heads of complaint or complaint types according to the police discipline code were counted instead of complainants.

The evidence from research tends to suggest a disproportionality in terms of complaints and the black community. Perhaps the reasons for this focusing can be traced to the police culture.

### THE POLICE CULTURE AND THE ISSUE OF RACE

Black and Asian people, perhaps not surprisingly, tend to view the police more negatively than white people (Radelet, 1986, p121). Are these perceptions the product of a particular policing style - where fixed ideas about people from certain ethnic communities work as a perceptual shorthand or blueprint - so often ascribed to the police culture? These beliefs, values and perceptions when mixed with the application of discretion often translates into considerable scope for biased police action (Sanders, 1997, p1056). Some critics suggest these perceptions translate into 'working rules' which structure police decision making (McConville *et al*, 1991). Whether the issue of race itself leads to disproportionate focusing is not known (Sanders, 1997, p1057). The actions of police are constantly being reviewed, especially at times when the public expresses a collective concern. The issues of stereotyping, targeting and discrimination were raised at the Lawrence Enquiry - not only regarding stop and search practice but also in respect of police practice generally. Whilst the police continued to argue that stops were essential in the fight against crime and that all people from whatever background were treated equally, they failed to approach this tactic in a colour conscious rather than colour blind manner, a factor which helped to alienate them in the eyes of those communities.

The use of previous experiences and common conceptions of crime and criminals which locates crime within parameters of age and minority group membership quickly evolves tactics of illegal frisks, illegal searches of cars and illegal arrests (Kelling, 1983, p165). This common sense attitude of the police grounded in empiricism and experience is an occupationally inflected version of the dominant majority - which brings them into conflict with minorities operating with somewhat different conceptions of crime and



criminals (Reiner 1978). The dysfunctional effects of specific targeting provokes accusations against the police of racism, a factor which Kinsey and Young suggest is a phenomenon which is more cultural than it is institutional and that top down institutional pressures are less racist than cultural pressures from bottom up (1982, p125).

Furthermore, dissatisfaction was expressed by other sections of the community to the very low numbers of arrests according to high numbers of stops made, causing civil libertarians to question the efficacy of such tactics. High numbers of stops and search for civil libertarians had more to do with information gathering, surveillance of society and infringements of civil rights. It is significant therefore that, in the ideal world, the police sub-culture should be seen to be non discriminating and treat people from whatever background with equal fear or favour. The truth, it seems, is different and shows the police to be institutionally racist (Macpherson, 1999). Members of the public are frequently and persistently stopped by the police where minority ethnic groups very often find themselves facing disproportionate levels of police attention (Young 1994, Fitzgerald and Sibbett 1996, NACRO 1997, Mooney and Young 1999).

A recent Home Office report entitled Statistics on Race and the Criminal Justice system (1998) show that black people are five times more likely to be stopped and searched than whites. The report contained further extensive and disturbing evidence of racial imbalance not only in the use of stop and search statistics but also as victims of serious crime, persons arrested, homicide victims and prison population. Explanations of discrimination can be defined in terms of the racist norms of the occupational culture into which recruits are socialised (Smith *et al* 1983; Holdaway 1983; Graef 1989; Macpherson 1999) or is it simply explained according to how these socialisation processes interact? (Reiner 1985; Lea 1986). Waddington (1999) questions this approach to race and police culture by stating that labelling the culture as racist is just about as useful as declaring it is not. No measure of the extent of that phenomenon is available so easy stereotypical labels can be applied to all police behaviour no matter how good or bad. This approach tends to lose meaning - which focuses on the negativity that such labels possess. This negativity in turn spirals into further value judgements which attracts critical comments. The problem is that there is no place for positive comment where anti-racist behaviour, tactics or priorities are tackled head on by the police no matter how well intentioned.

What is clear is that historically the police, and not necessarily the police sub-culture, have tended to target members of the minority ethnic

community possibly because of the particular type of colonial policing adopted out of fear of outsiders, illegal immigrants or aliens.<sup>2</sup> Enforcing the law on Immigration often fell to the Police and not the Immigration Service.

Early examples of police contact with the minority ethnic communities resulted in mutual distrust, suspicion and doubt. As a consequence, cases of racial prejudice occurred in the late 1950's in Notting Hill; events which pre-date official police complaint statistics; allowing no measure of official dissatisfaction. Concern was expressed at the time that;

“The allegations were that black people were being beaten up in police stations, harassed by police officers on the streets and having their clubs and homes raided by police officers who did not have search warrants” (Cashmore *et al*, 1991, p24).

In the early 1960's Cain's early study of a city force found that;

“Immigrants, in particular coloured immigrants....were subjected to stereotyping and abuse. There was an expectation of black violence, leading to an observed reluctance to intervene in disputes concerning them and possibly a self fulfilling expectation of violent encounters. Blacks were seen as especially likely to be offenders (although there was no evidence of disproportionate involvement in crime, they were by definition permanently in the area of suspicion” (1972, p117-119)

This sentiment was also echoed in Lamberts' study of Birmingham in the 1960's, which perceptively predicted future police difficulties;

“The social system which promotes widespread prejudice because it involves policemen as citizens in a set of attitudes as policemen, also promotes barriers to effective policing...The police share commonly and widely held views about coloured immigrants and the colour problem which are detrimental to good policing and which auger badly for an improvement in the general tenor of race relations” (Lambert, 1970, p183-187).

Research appears to show that membership of minority ethnic groups attracts suspiciousness and young males are likely to attract most police attention. What determines over-representation of stop and searches has more to do with who gets targeted, when this happens and what influences bring about their selection. Pre-determined perceptions or stereotypes that locate crime within the black community will inevitably mean that police attention is focused on many more innocent black people than guilty, and a greater proportion of black people will be targeted compared to whites. Suspicion

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<sup>2</sup> In 1971 immigration legislation was introduced which referred to Aliens as people who were non UK or Commonwealth citizens .

reinforced by intelligence, may in this context provide a legitimate cloak for harassment (Fitzgerald and Sibbett, 1997).

Public dissatisfaction can be gauged through surveys like the PSI report (1983) which found that black people were more likely to be stopped than whites and officers frequently had no reasonable suspicion for stopping suspects. The British Crime Survey (1993) data also confirmed black over-representation when it revealed that there were 6 black searches for every white one compared to the Metropolitan Police Service (MPS) statistics for the same year, where the ratio was 4:1.

Mistrust of the police is widespread amongst the young, unemployed and socially excluded. Furthermore the brunt of stop and search policy has led to the alienation and marginalisation of the minority ethnic community (Young, 1994; Mooney and Young 1999). Afro-Caribbeans are the most frequently and repeatedly stopped, they are most often searched, and they are most dissatisfied with how politely they were treated (Skogan, 1990). Kelling warned that although widespread support for the police from minority communities existed, this support was threatened by the use of police discretion and techniques which targeted what he calls “youthful male minorities”, resulting in dysfunctional effects that squanders the goodwill generated by community policing (Kelling, 1983). Black people may no longer afford the police as much legitimacy as they might have done (Holdaway, 1986). Therefore the issue of stop and search practice goes straight to the central theme; that of policing by consent which raises two distinct questions. First one which reflects on the peculiar character of the interaction between citizen and police officer and second: the more generally defining one of the relationship with marginalised sections of the community and the police institution as a whole.(Brogden, 1985, p101)

For the police, stop and search practice is really about discretionary power -whereas for many black people and people from minority ethnic communities it is about police provocation. It is with this potential conflict in mind that legislators sought to limit police provocation through issuing ‘codes of practice’ so as restrain discretionary powers.

Young (1994) emphasises that there are ever increasing numbers of stop and search being carried out and that often they are grounded in prejudice and irrationality which is disproportionately weighted against young, working class, male and black people. He states further that;

“To stop one in ten of the black population and, indeed over one in two black males is an extraordinary degree of discriminate focusing which has no justification in terms of prevalence of likely offenders” (1994, p73)

## PROVOCATION AND AGGRESSION

Some police officers tend to stereotype black people as being aggressive and provocative. Police officers will often use their contact experience when making such assumptions. Roger Graef (1990) recorded the police in their own words in his ground breaking work entitled Talking Blues. He was able to chronicle the thoughts, perceptions and individual accounts of policemen and women from all ranks in England and Wales. On the issue of provocation and aggression Graef records the accounts of a Metropolitan Police Chief Inspector aged 43 years and a 25 year old constable who have varying levels of experience, influence and power. Their perceptions suggest a stereotypical view of black people. They said that ;

“Black people do have an aggressive manner, they are very excitable, and they shout and wave their arms about and they sort of sway and stagger.”(1990, p121)

and

“...West Indians are a very physical race, they stand too close to police officers. They were standing too near the police officer I was with. They were pointing fingers in his face and he just lost his nerve”(Ibid, p129).

These statements seem to echo a type of labelling and stereotyping of all black people. The police claim that these statements suggest a tendency to become aggressive and cite provocation as a facet of black life. Perhaps another explanation would be that police provocation and aggression spawns the same reaction in others during any contact, a factor solved by mutual disrespect.

Stevens and Willis (1981) had considered the element of provocation in their analysis. This is where, in the eyes of the police officer, actions or inaction on the part of the complainant were likely to lead to provocation <sup>3</sup>. Analysis

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<sup>3</sup>Cases of provocation are listed in the report and include for example where the complainant struggled with the police officer, attacked the police, threatened them with a finger or umbrella, interfered in an incident which did not concern him. Furthermore this included incidents where the complainant took a pen out of his pocket to record the officers shoulder number, although the officer thought he was producing a knife, non compliance

of the statements in individual complaint files indicated that complainants in black and Asian incidents were more likely to be seen as provocative towards police than in incidents involving white people. Some complainants admitted they were drunk, uncooperative or even aggressive although over a third of the sample involved no provocation at all. However when comparing the 1973 figures with those of 1979 the element of provocation had increased with reference to white and Asian<sup>4</sup> complainers but had reduced by over a third in the case of black complainers. Black provocation and aggression decreases during police initiated contacts whilst that of white and Asian descent increases.

Black and Asian people made more complaints per person and usually made more than one complaint at a time. Black and Asian complainants accounted for 28 per 10,000 population in the 15-24 year old age range, compared with 5 out of 10,000 for white complainers thus indicating extreme disproportionality regarding ethnicity. Very often these complaints involved some sort of alleged police behavioural irregularity, such as oppressive conduct or improper behaviour.

The authors reported that allegations of racial discrimination were less common in 1979 than they were in 1973 which appeared to indicate either a greater tolerance between police and black people or a lack of confidence in the complaints process on the part of black people. This said, the study highlighted the fact that by 1979 more black and Asian complainants had criminal records than they did in 1973. The substantiation of any complaint during the sample period was low for all ethnic groups especially if the complainant had a criminal record or was reported for an offence.

Stevens and Willis (1981) also asserted that there were no ethnic differences in the circumstances of a complaint although black and Asian complainants tended to withdraw less of their complaints than did whites. A point of interest was the very low substantiation rates for complaints involving black and Asian people. For example the first quarter of 1973 compared with the first quarter of 1979 showed the substantiation rates for white people were 5.0% and 3.1% respectively. For black and Asian complainants this plummets to 1.7% and 1.3% respectively indicating that complainants from black and Asian communities are less likely to have their complaints upheld.

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with police requests and lack of respect.

<sup>4</sup> In the case of Asian complainants in 1973 provocation accounted for five cases when in 1979 this had increased four times that amount to nineteen. Similarly provocation in respect of white complainants had increased by one third.

On the basis of these statistics, if you were a black or Asian complainant, aged 15-24 years, have a criminal record, reported for an offence, and you were to allege assault whilst in police custody there would be virtually no chance of substantiating your complaint. Even ten years later matters had not improved. A study of the Police Complaints system was undertaken by Maguire and Corbett with the co-operation of the PCA.

Using official statistics there appears to be an over representation by black and Asians within the complaints figures as the table below shows.

Table 5.1- Percentage Complaints against the Police by Ethnicity - Metropolitan Police District, 1973 and 1979.

	white	black/asian	white	black/asian
	1973	1973	1979	1979
<b>Complaints by ethnic grouping</b>	84.7	15.4	82.0	18.0
<b>Completed complaints of assault</b>	82.8	17.2	78.8	22.2
<b>proportion of population in MPD(1975)</b>	92.9	7.1	92.9	7.1

Given that Asian and black people constituted 7.1% of the population they were obviously over represented in terms of these complaints statistics. The data also shows that in the years 1973 and 1979 black and Asian complaints made up 15.4% and 18% respectively whilst assault allegations against police resulted in 17.2% and 22.2% of all complaints. This shows a rising trend both in terms of all matters but, importantly, in terms of excessive or improper use of violence by police.

Recent data drawn from PCA Annual Reports indicate that black and Asian complaints have remained constant, on average representing about 16-18% of all complaints handled by them. The PCA have acknowledged the over-representation of black people in official statistics. For example in the PCA Annual Report for 1995 they reported that recorded complaints for blacks and Asian complainants were 16% for all complaints made, while a further 8% represented those whose ethnic origin was unknown. These figures represent statistics taken for England and Wales, (Scotland and Northern Ireland have separate and different systems).

The Home Affairs Committee minutes of evidence, relating to the Police Complaints Authority dated 13th December 1995, also refer to the issue of black and ethnic disproportionality. They recognised that some,

“18% of complaints dealt with by the Authority came from members of minority ethnic communities” (1995, p3).

On the same subject Sir Ivan Lawrence, as Chairman said;

“A higher proportion than most of us.....tend to think that the police are biased against them and are behaving in some way badly against them” (Ibid, p22).

This question was taken up by another member of the Home Affairs Committee, Mr. Hutton, who took the matter a step further. He outlined the fact that the PCA now record with the aid of the Police the ethnic origins of the people who complain (something which the PCA started in 1994 at the insistence of Mr. Cartwright, the PCA Deputy Chairman). On the issue of proportionality Mr. Hutton was certainly challenging when he said;

“If we consider the size of the ethnic minority population in the community as a whole, it is roughly about 5%. Complaints are running at a level of three times that amount.....Do you draw any conclusions about that? Are you concerned about the level of complaints?” (Ibid, p 23)

In evidence before the committee responding to the question from Mr. Hutton, Sir Leonard Peach argued that;

“...we had been told that the ethnic minority population did not use the complaints procedure (but) taking the numbers which you quoted the ethnic minority population does use the procedures and that is a pleasing result” (Ibid, p23).

In answering whether ethnic minorities were justified in thinking that the police were biased against them, Mr. Peter Moorhouse (the then PCA Deputy Chairman, now Chairman) commented that;

“..I think in the meetings which we have in the inner-city areas there is a very strong view supported by anecdotal evidence. Moving from the anecdotal to the concrete evidence in the face of evidence from stop and search it would be difficult to argue against that view” (p24).

From the evidence to the Committee it appears that both the PCA and the members are concerned with policing strategies involving stop and search

and their likely impact on inner city areas. The PCA view is that high numbers of complainants from the black and Asian community represents for them a greater confidence in the police complaints system. This is suggested on the basis of their willingness to use the system - not on the apparent levels of racism demonstrated by the police.

#### POLICE AND PUBLIC RELATIONS.

The public perception of the police appears to have moved away from that halcyon character, Dixon of Dock Green (Reiner, 1985) with its image of trustworthiness, co-operation and assistance, towards a more forbidding figure more akin to Darth Vader (from Star Wars). For Dixon of Dock Green read community policing and for Darth Vader read riot control or military policing. It is from the standpoint of military policing that Friend and Metcalf commented;

“the move towards military policing in the inner cities is part of a general move in state policy towards a ‘pole of coercion’ in the control of a new generation of unemployed, and to keep down new forms of struggle against the capitalist crisis” (1981, p16).

Thus Lea and Young (1984) blame the poor police/public relations in urban areas on the shift from consensual to more coercive forms of policing. They believe that coercive policing generates a vicious circle where desperate attempts to catch criminals lead to a heavier reliance upon coercive policing that in turn leads to further alienation on the part of the community.

For some years the relationship between the police and members of the ethnic minority community in Britain has been the subject of concern. The Home Office specifically considered this relationship when it commissioned a study entitled *Ethnic Minorities Crime and Policing* in 1980. The research considered i) the issues of negative police contacts, ii) differential patterning of crime and iii) crime reporting of ethnic minorities. The methodology selected particular areas which showed a high West Indian population and high crime rates in London, Manchester, Birmingham and Leeds. They chose to concentrate their research on an area of Manchester with a population of some 33,000 people, which found that black people were stopped and searched at the same rate as white people and that police contact rates were the same for both blacks and whites. Stevens and Willis (1979) found quite high arrest rates of blacks when compared against other groups. Research has suggested a higher incidence of police contact in areas which



had lower levels of housing. West Indians felt more dissatisfied than whites about how the police treated them when contact was made with police.

The PSI report (1983) found that black people were more likely to be stopped than whites and officers frequently had no reasonable suspicion for stopping suspects. They further identified that the police perception was that black people and crime were linked. In a report commissioned by the Institute of Race Relations in 1979 data was analysed on complaints against police action which was later presented to the Royal Commission on criminal procedure. They concluded that black people felt over-policed especially at social events, victimised by the police when black victims of crime required protection and the protection was not forthcoming. They felt that black people faced abuse and harassment by police officers on the street and in the police station. Evidence of real life incidents were added to back up their conclusions.

There appears to be a strong feeling of alienation amongst the ethnic minority community, and this negative self image means that further discontentment is fuelled not only by rumour and hearsay but also by highly publicised cases of injustice which appear in the media at frequent intervals. This gives ethnic minorities a feeling of double victimisation: victimised by the criminal and then by the police. The downward spiral of perpetuating bad police relations is further assisted by continued negative contacts.

#### URBAN UNREST.

The notion of linking race with crime has been an assumption articulated by many different organisations and individuals since the early 1950's. The Metropolitan Police "began to link coloureds with immoral activities as far back as 1954" (Howe, 1988). This caused a Home Office Memorandum to be issued to all Chief Constables requesting a whole range of information on immigrant activity including illegitimacy rates and involvement in Brothels (Howe 1988). Of course there was also Enoch Powell who in 1976 defined mugging as essentially a black crime, and Harvey Proctor MP in 1977 who managed to obtain Home Office statistics which seemed to suggest a black crime wave. Newspapers such as the Mail and the Sun were keen to exploit the information as an excuse to use black people as scapegoats.

The Daily Telegraph commented that;

"Many young West Indians in Britain, and by a connected process, growing numbers of young whites, have no sense that the nation in which they live is part of them.

So its citizens become to them mere objects of violent exploitation” (March 11th 1982).

Media negativity, increased police attention and harassment appear to have all been responsible for marginalising the black community. Additionally, seemingly harsh and insensitive policing policies which amounted to containment and harassment caused members of black communities to rebel. Disturbances and civil unrest broke out in Birmingham, Bristol (1980), Liverpool, Nottingham, Manchester and London (1981/2 and 1985). So by 1981 the issue of black crime and violence was indelibly etched on the political agenda; raising important questions about the nature of policing multi-racial areas. Rioting expressed the anger and frustration of the black community for a wide range of ills including the policing of inner city areas, failures of the criminal justice system, and lack of protection from race attacks. Anti-police outbursts were often sparked off as a result of indelicate policing methods, as took place in 1981 with the heavy police presence on the streets of Brixton in attempting to combat street crime. The catalyst to the Brixton riots occurred when an apparently injured black youth was stopped by police and later allegedly abducted from them by a hostile group who later, confronted the police officers and who perceived this as unjustifiable police behaviour.

#### **BLACK COMPLAINTS FROM STOP AND SEARCH**

Comments made by the PCA appear to cast doubts about police stop and search powers and procedures. The fact that many stop and searches are resented and lead to complaints, tends to confirm the comments made by the Home Affairs Committee that police tend to target ethnic minority groups.

Clearly young people from minority ethnic groups may feel persecuted or unfairly harassed by police using their powers of stop and search. Providing stops and searches are carried out professionally and without incident there is no problem. However the Metropolitan Police Commissioner Sir Paul Condon in 1995, when he said that most street robberies in London were committed by black people, wittingly or unwittingly provided negative images regarding black criminality. This unfortunate yet clear message translated to the workforce; it meant that there was a black crime wave in respect of street robbery. Could the message become reflected in some way in stop and search statistics annually?

Mooney and Young (1999) highlight the increasing numbers of stop and search activities being carried out and point to growing levels of dissatisfaction and alienation. When members of the public feel upset or dissatisfied with police behaviour, or when they resent being stopped, their choice of redress is limited. Aggrieved members of the black community tend to resort to civil redress rather than complaint as many of them are reluctant to contact the police, let alone make a complaint about police behaviour. Clearly what lies at the heart of this matter is police attitude and the cultural practice of stereotyping which roots crime in the black community. McConville and Shepherd emphasise this point thus;

“Complaints related to harassment of black people, unjustified stopping, searching and arresting and much less frequently brutality towards black people. Overlaying all of these comments was a persistent complaint about attitude of officers”. (McConville and Shepherd, 1992, p173)

The PCA expressed its concerns regarding stop and search complaints in 1995, 1996 and 1997. In the PCA 1996 Annual Report they focused on stops and searches particularly those resulting in complaints and added that stops and searches of people of Asian origin amounted to 4% of all cases of complaint, whilst they represented an additional 14% of complainants. Jointly black and Asian complaints amounted to a staggering 44% of all complaints. Additionally further detailed analysis showed that the Metropolitan Police accounted for 51% of all these stop and search cases during the year or put another way 79% of all stop and search cases complaints originated from black and Asian people.

A year later the PCA in the 1997 Annual Report, followed up their concerns with further comments on stops and searches. They said;

“The Authority’s 1995-6 annual report expressed concern about the mounting evidence that members of minority ethnic groups were being disproportionately singled out by police officers using stop and search powers. Nationally, one in five people stopped and searched are from minority ethnic groups who represent only one in twenty of the population. In the Metropolitan Police area 18% of the population are of a minority ethnic origin but 35% of those stopped in 1995 come from these groups” (p42).

These concerns are supported by the Home Office research data on *Statistics on Race and the Criminal Justice system*, (1998) referred to earlier in this chapter. Furthermore, the PCA expressed continued concern that matters in respect of stop and search powers may in fact get worse rather than better. Their reasons arose as a result of proposed changes to the ‘codes of practice’, suggested by the Home Office in their consultation paper in November 1996.

These changes proposed sweeping powers aimed at the knife carrying culture amongst some young people.

Justification for stop and search should come about through reliable information. It is suggested that members and associates of particular groups who are known to regularly carry knives - and other weapons or controlled drugs - would be stopped and searched as a matter of course. The revised code would allow targeting of gang members identified by their collective wearing of distinctive clothing, jewellery, insignia or tattoos. The PCA further warn that if these changes were introduced into the Codes of Practice, (and this would not involve legislation) then there may be a likelihood of an increase in complaints from young people, particularly those from ethnic origins alleging harassment simply because of their choice of clothing, hair style, or fashion accessories. This method of selection is highlighted as improper practice in the introduction to the 'codes of practice'. The PCA have voiced their concerns to the Home Office that the changes may aggravate an already difficult relationship between the police and young people- *particularly young black men*.

Is it true therefore as Humphrey (1972) predicted that,

“black people are victims of a systematic force of class and racial oppression carried out by the system through its institutions. The Police, the courts of law, the prisons, the community homes, the mental institutions, the educational system, all claim an over representative number of black victims” (p223).

I now wish to turn to a particular recent event which illustrates graphically an example of policing the black community; the murder of Stephen Lawrence.

#### CASE STUDY- THE MURDER, THE COMPLAINT AND THE PUBLIC OUTCRY.

In times of crisis the true nature and inadequacies of any system come to the fore. This is currently being evidenced by public reaction to the state of the railways in Britain particularly after a number of recent spectacular train crashes involving severe damage, disruption and loss of life at Hatfield and Paddington. This analogy; a tail of failure, inadequacy and incompetence can also be attributed to the state of British policing highlighted by one incident that happened when an innocent black teenager, Stephen Lawrence, was murdered in Eltham, South London in the Spring of 1993.

This was an unprovoked attack and murder of an innocent black teenager by a gang of five racist white youths in a public place. The resulting murder investigation was beset with faults, mistakes, and failure; factors which were evident to all but the police themselves. At no time before had a murder investigation conducted by any police force; its processes, methods and procedures come under such close public scrutiny. The incident provoked considerable public anxiety and prompted a Public Inquiry by the Home Secretary into their handling of the matter. This case illustrated the attitude and responses of police to the needs of one black London family.

### **Thirty Seconds of Tragedy**

This is a case study into the death of Stephen Lawrence, showing the various faults and inadequacies. It was not until four years after the event that the Police Complaints Authority ordered a high level police complaints investigation into this matter by very senior police officer. The experiences Mr and Mrs Lawrence had with the police caused them additional and unnecessary distress at a time when they should have received support.

On the 22nd April 1993 Stephen Lawrence was with his friend Duwayne Brooks at a bus stop in Well Hall Road, Eltham, south London when they encountered six white youths. The group quickly engulfed Stephen who was standing separately from Duwayne, and stabbed him twice. Stephen ran some distance with his injuries before he collapsed and died later. Duwayne ran off and the suspects disappeared down Dickson Road.

An inquest hearing was commenced in 1993 and later reconvened in 1997 by the Coroner Sir Montague Levinne at Southwark Coroners Court. After the evidence was heard the jury returned their verdict in the following terms:-

“Stephen Lawrence was unlawfully killed in a completely unprovoked racist attack by five white youths” (The Stephen Lawrence Inquiry, 1999, p3)

At the conclusion of the inquest into their sons death (13th February 1997) Mr and Mrs Lawrence wrote a formal letter of complaint to the Commissioner of the Metropolitan Police and a Police Complaints Authority investigation was launched on the 20th March 1997. Both Mr and Mrs Lawrence had made press statements and had given evidence at the Coroner's Inquest. Transcripts of evidence were available from the inquest and supplied to the Kent Police Investigation Team who had been called in by the PCA to investigate the allegations. On 29th September 1997 Mr and Mrs Lawrence and their solicitor Mr. Khan gave their support for the police complaints

inquiry. Mr Lawrence gave a statement voicing his complaint that the investigation into his sons death by the Metropolitan Police was 'bungled'. As a result of this the PCA proposed the following terms of reference, to:-

"To investigate the MPS; handling of the murder of Stephen Lawrence on 22nd April 1993 and related matters but with specific regard to:-

- i. The initial response.
- ii. Family Liaison
- iii. The conduct of the murder investigation up to and including the review carried out by the MPS".

A team of nineteen officers from the Kent Constabulary under the close supervision of the PCA investigated the allegations for nine months - re-interviewing participants, witnesses and suspects and questioning new witnesses. Mr and Mrs Lawrence were both seen at their request by the Home Secretary the Rt. Hon. Jack Straw. As a result of their discussions a Public Inquiry was ordered in July 1997 under Section 49 Police Act 1996.

#### HOW DID MATTERS WITH THE POLICE GO SO WRONG?

Primarily there were five stages where matters were mishandled, misunderstood or mismanaged. These were at the scene of the crime, at the hospital, family liaison, throughout the investigation, and the internal review.

#### **The scene of the crime and the police response**

No police officer carried out any form of first aid to Stephen Lawrence as he was lying on the floor bleeding from his chest with the exception of testing for pulse or whether he was breathing. The level of first aid supplied was grossly inadequate.

There was a lack of leadership, direction and organisation at the scene by any of the senior officers present who had large numbers of officers at their disposal. No initial enquiries were made to enable a pursuit of suspects because the assumption was there had just been a fight. Only at a later stage did they gather the sparse information and act upon it. The picture presented was that of chaos, disarray and uncertainty with many of the police officers completing tasks without any degree of real direction or information. Much of what was done was doomed to fail because even after the arrival of the

CID and Senior Officers little changed - with continuing disorganisation and a lack of energy and imagination.

### **The Hospital and Family liaison**

There was a lack of close, careful and sensitive treatment of Duwayne Brooks at the hospital and later at Plumstead Police station when he made a very lengthy statement. Mr and Mrs Lawrence were also treated at the hospital by the police in an insensitive, patronising and indelicate manner. This occurred in a number of ways. The police were seemingly unaware of the identity of the body and needed to follow the chain of identification necessary to satisfy the coroner. Mr and Mrs Lawrence who were called to the hospital by a friend were asked to view 'a lad' who had just been brought in having just told them that he had died. The aim of this was to see if the young person was their son Stephen. This tactlessness and insensitivity continued later when Mr Lawrence was exposed to details explaining the fact that after identification there would have to be preservation of the body, clothing and other details which were required for the murder investigation.

The Lawrence Enquiry commented on the lamentable failure of the Family Liaison system in the following terms;

“One of the saddest and most deplorable aspects of the case concerns the failure of the family liaison. Mr and Mrs Lawrence were never dealt with or treated as they should have been. They were patronised. They were never given information to which they were entitled. Family liaison failed despite the good intentions of the officers allocated to the task. Senior Officers never intervened to rectify this failure” (The Stephen Lawrence Inquiry, Para 46.7, p318).

The lasting impression in respect of family liaison was of inappropriate behaviour and patronising attitudes towards a black family who were subjected to unwitting racism.

### **The Murder Investigation.**

This was not a murder enquiry which was met with a wall of silence. Information flowed into the Incident office almost immediately. Within the first few days information arrived from different sources naming the same suspects to the crime. Police sat on their hands and failed to make any initial early arrests. This, the Inquiry stated, was the central issue and viewed as a fundamental error of judgement. When arrests were made they occurred on

7th May 1993. This error was placed initially at the door of Detective Superintendent Crampton who was responsible for the investigation during the first 72 hours. After this Detective Superintendent Weedon took over the investigation and carried on in the same manner as the previous Investigating officer. He claimed to the Inquiry that whilst information was available, this was not hard evidence and chose instead to rely on evidence obtained from the surveillance operation of the suspects. The failure to arrest has been a problem which has deeply concerned Mr and Mrs Lawrence since the early days.

The inquiry established firstly that there were no grounds for reasoning that Mr Crampton held back the arrests on racist grounds, secondly that Mr Weedon was a fastidious man not motivated by corruption or racism however he was infected by unwitting racism by negatively stereotyping the Lawrence's and their solicitor Mr Imran Khan when family liaison broke down. Whilst it is unfair to judge with hindsight, the Inquiry asserted that they would never know what the result would have been, had early arrests had been made. The second in command (Detective Inspector Ben Bullock) stated that the murder was racist. The Inquiry was critical of him, stating that he was appointed above his true station and in a position beyond his abilities.

#### **Problems with the Investigation.**

There were many problems with the investigation that were highlighted by the Inquiry. Apart from the initial decisions not to take early action and make arrests there were other specific allegations. These were as follows;

- i) the decision to leave Clifford Norris at large is unexplained because his influence to inhibit young witnesses to come forward clearly helped to obstruct the course of the investigation from continuing.
- ii) The surveillance was inadequate. It was badly planned, executed and inadequately documented.
- iii) The incident room came in for criticism because the HOLMES<sup>5</sup> system was inadequately staffed nor appropriately supervised with trained staff. This caused delays in processing information.

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<sup>5</sup> HOLMES is a computer entitled Home Office Large Major Enquiry System. This is the second generation system designed to assist, collate and categorise data in respect of serious major crime. The system was designed to help Major Incident Investigation protocols that standardises Administrative procedures.



- iv) There were failures initially to take action in connection with the occupants of a red Vauxhall Astra who were seen twice in the vicinity and the quick elimination of suspects who were reported to be involved in the murder.
- v) The Identification Parade was poorly planned. There were clear breaches of the Codes of Practice where most importantly evidence may have been compromised when witnesses were allowed to remain together before the parade was formulated.
- vi) Witnesses including Duwayne Brooks stated that there was a fair haired attacker. There was a clear failure to deal with this line of inquiry.
- vii) The searches carried out on 7th May on the suspect's premises were inadequate.
- viii) The handling of informants and reluctant witnesses especially "James Grant" were not properly handled, protected or sensitively dealt with.
- ix) Policy decisions went unrecorded and were ill conceived.

### **The Internal Review**

A review of the murder investigation was carried out independently by Detective Chief Superintendent Barker. Here was an opportunity to correct some of the flaws regarding the investigation. However the report only rubber stamped the investigation and questioned none of the decisions taken at the early stages. The final report was factually incorrect and inadequate. The report was re-considered at various levels up the hierarchical chain of command to the Commissioner of the Metropolis yet no one tested the validity of the recommendations and assertions. The Lawrence Inquiry were very critical of Detective Chief Superintendent Barker and suggested that;

"There can be no excuses for such a series of errors, failures and a lack of direction and control. Each failure is compounded. Failure to acknowledge and detect errors resulted in them being effectively concealed. Only now at this Inquiry have they been laid bare." (The Stephen Lawrence Inquiry, 1999, p320)

## **The Second Investigation**

The investigation had now become stale and the Crown Prosecution Service had twice indicated that the available evidence was insufficient to obtain a satisfactory prosecution. This new inquiry was an attempt to recover the situation and far sighted methods were employed to get to the truth. For the first time Mr and Mrs Lawrence were treated sensitively and there was no criticism of the new Investigating Officer Detective Superintendent Mellish nor of the Family Liaison by Commander Perry Nove (Now Commissioner of the City of London Police).

## **The Kent Investigation**

In December 1997 the Kent Investigation team headed by the Deputy Chief Constable Robert Ayling submitted an interim report to the PCA citing a catalogue of significant weaknesses, omissions and lost opportunities. It recommended disciplinary action against a serving officer - Detective Inspector Ben Bullock - who had delayed his retirement to fight seven charges or neglect of duty. Four further officers would also have had action taken against them. But since they were all retired and no longer serving police officers they escaped internal prosecution. There was no evidence to support criminal charges.

## **DISCUSSION**

This was more than an inquiry about the actions of individuals, processes and procedures. Rather it was more about policing a multi-cultural society in Britain and not just in London. This was also about police organisational matters, shared institutional beliefs and police cultural attitudes. Within these notions racism and the collective failure of organisational discrimination where processes and methods were highlighted that disadvantage certain sections of the community were elaborated.

The central focus of the inquiry was on the issue of 'institutional racism' and the juxtaposed meaning applied by the police and members of ethnic minority communities to the phenomenon. For minority ethnic groups the meaning expressed their negative experience of relations with the police whilst for the many police officers it is perceived as an attempt to undermine legitimate policing practices by playing the race card. Dr. Oakley summed this up succinctly that:

“individual young black people by contrast neither see this as an individual isolated incident, nor probably do they have an accurate understanding of police powers. Facing, along with their friends, such stops on a fairly regular basis, theirs is a collective experience of being routinely targeted by a controlling white institutional power” (1999, p294)

### **Institutional Racism**

The Inquiry labelled the police ‘institutionally racist’ something which caused considerable concern: especially amongst some sections of the police. The Inquiry defined “institutional racism” in the following terms:

“Institutional racism consists of a collective failure of an organisation to provide an appropriate professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantage minority ethnic people” (Macpherson, 1999 para. 6.34 p 321).

Members of the inquiry were certainly convinced that the police were an organisation which displayed qualities consistent with their conception of ‘institutional racism’. Before I examine the subject it is essential to place ‘institutional racism’ within its historical and sociological context.

The early 1980’s marked another watershed for policing in England and Wales. Not only were the Brixton Riots being investigated by a senior Judge, Lord Scarman, but the Greater London Council (GLC) (1982) were inquiring into the issue of policing racial harassment in London. Behind the scenes Smith and Gray (1984) were compiling the Policy Studies Institute (PSI) Report on policing in London. Efforts were also being made to formulate new legislation that later became known as the Police and Criminal Evidence Act which attempted to address civil libertarian concerns on prisoner’s rights; a subject explored in greater depth later in this thesis. Serious concerns were being expressed about police deviance and behaviour.

The Scarman report (1982) was published in the aftermath of the Brixton Riots and highlighted the question of racism in policing. The report acknowledged the ‘bad apple’ thesis of racism (Pearson *et al* 1989; Howe, 1988) that located racism on an individual level. The report however, rejected the notion that in terms of policy or in society in general these actions resulted in unwitting discrimination against black people. Scarman failed to accept that certain practices undertaken by various public bodies constituted ‘institutional racism’ (Lea, 1986, p161) although he suggested that the

allegation should be investigated and if found to be true then swift action should be taken against it. The report also recognised the common distinction between direct and indirect racism. However, both Reiner (1985) and Scarman (1982) also pointed out that there was no evidence to suggest that an official (unwritten) policy of discrimination against ethnic minority groups existed. The PSI report (1984) also defined racism within individualistic terms however Lea (1986) developed this view a stage further by suggesting that such behaviour was rooted within the occupational culture with its shared meanings and beliefs where such action legitimated and re-enforced the cultural bond. Mooney and Young (2000) contend that police officers with racist attitudes are bound to express them in such circumstances whilst those who do not harbour these opinions are bound up in policies which have racist outcomes.

Lea also suggested that racist behaviour, because of its cultural connection was by nature an institutional phenomenon. This he sub-divided into overt and covert racism. This means that racist behaviour can be both individual or institutional but also overt or covert. It is the indirect or covert racism which Lea suggests labels the police 'institutionally racist'. The analysis allowed for classification that outlined the importance of clearly distinguishable working practices from individual attitudes. It further highlighted these practices as having racist outcomes whether or not the overarching policy was racist in intent (Mooney and Young, 2000, p82).

Bowling (1998) developed this theme by suggesting that racist behaviour by the police themselves brought such action within the definition of racial harassment. Police were cited as being deeply implicated in London's racial harassment problems both as perpetrators of racial violence and also in terms of failing to respond to racial attack victims. Even the GLC found evidence of indirect or institutional racism by the police. This focused on the collective failure to respond to the needs of victims of racial harassment which included delay in reporting, unwillingness to investigate or to prosecute and defining criminal assaults (Bowling, 1998, p 89).

Such were the concerns by the mid 1980's that racist behaviour by a police officer should become a matter for sanction and punishment. Such behaviour became an offence against police discipline and was incorporated into the new Discipline Code which was brought in under PACE in 1986. Between 1992-2000 there have been on average just under five substantiated cases per year of Racially discriminatory behaviour. Careful examination of the data shows the incidence of racist behaviour to be on the increase. The 1999-2000 figures show eight substantiated allegations (Cotton and Povey, 2000, p13).

This indicates two features; that awareness of police managers has been heightened on such matters and that allegations of racist conduct by police officers must be dealt with severely. Amid calls that the complaints system was unfairly discriminating against members of ethnic minorities the PCA in 1990 responded by publishing data on racially discriminatory behaviour in their annual reports (PCA10, 1995, p28) even though they had collated these results since 1987. The continuing debates regarding 'institutional racism' prior to the Macpherson Inquiry have been explored, contextualised and brought up to date. This was the background to the findings of the Lawrence Inquiry.

Indeed the issue of 'institutional racism' was the subject of much debate (*ibid*, p20) and in - depth analysis by the Inquiry and evidence was taken from a wide number of sources. Dr. Oakley gave evidence that Scarman accepted 'unwitting' or 'unconscious' racism in individual terms but refuted suggestions of an organisational nature whether at the level of society or public institution.

In terms of complaints against police and investigating police discipline, an investigating officer only considers individual acts on the part of a police officer because both the law and the police discipline code are worded only with singular actions in mind. Any investigating team would not concern themselves with the broader issues, as the Kent investigation team asserted their job was:

“...an investigation into complaints against a specific officers and as such could not cover the broader issues of racism and whether or not it existed within the MPS” (*Ibid*, p20)

Matters were hampered by an inability to identify common group behaviour by any squad, unit or department and the Scarman conception of racism appears to be normal understanding in police circles. It was also this contention that informed the conclusions of the PCA.

Whilst the Inquiry accepted that on an individual level racism existed in the police they suggested that not all police officers were racist. Dr Oakley identified his conception of 'institutional racism' in terms of three competing explanations. These three forms or sources were; Official policies, routine practices and informal culture. These are explained as:

i) **Official policies.** The term institutional racism may apply to in circumstances where organisational policies overtly advocate or accept differential treatment directly in respect of race.

ii) **Routine practices.** Institutional racism may apply where routine and legitimate police practices which may not be overtly or directly discriminatory, nonetheless their effects may actually discriminate.

iii) **Informal culture.** This is where differential treatment systematically results from the influence of informal culture within the organisation on the behaviour of their staff. This can take the form of “taken for granted assumptions” unconscious stereotypes which manifest themselves in unintentional behaviour.

Oakley (1999) contended that policework often brought the police into contact with a skewed cross-section of society which he recognised had the potential for producing negative stereotypes of particular groups, a factor supported by Paul Wilson, Metropolitan Police Inspector and member of the Black Police Association who also gave evidence to the Inquiry. He said that:

“Given the fact that ... predominantly white officers only meet members of the black community in confrontational situations, they tend to stereotype black people in general (and) we should not underestimate the occupational culture, which we say is all powerful in shaping our views and perceptions of a particular community” (*Ibid*, p25).

The officer also suggested that all police officers conform to the norms of the occupational culture which shaped the way that they differentially view and perceived members of a particular community. The essential point here was, as Lea pointed out, the fact that restricted interactions with white police and black people was the lack of contact outside the street level relationship (2000, p222). The assumption for the white officer on any contact with a white person was that not all white people commit crime because of knowledge of that community whereas because he was unaware generally that black people do not commit crime the legitimacy of stereotyping was re-enforced. Restricted interactions with members of the ethnic minority community in policing situations created a skewed mental picture or blueprint of reality for the officer to use in the next contact. This issue highlighted ethnicity *per se* as being the key. Lea asserted that it was power relations amongst communities which is the real problem. Partnership structures have been erected as a result of the Crime and Disorder Act 1998. Lea (2000) further argued that there will be no change in power relations simply because of the social, economic and political exclusion faced by members of ethnic minority communities. The issue of racism remains unchallenged (*Ibid*. p227). It was control of police power that Lea advocated

was the answer through constitutional democracy. This was also a matter supported by the Inquiry where a local government body with (full powers to appoint chief officers of police) reflects the ethnic mix of local communities. (Recommendations 3, 4, 6, and 7).

The notion of 'institutional racism' was a hotly contested issue at the Inquiry. Even the Chief Officers of Police could not agree among themselves. For example the Commissioner for the Metropolis, Sir Paul Condon, refuted the allegation because of the likely overt assumption placed on the definition. Mr. Wilmot the Chief Constable of Greater Manchester was willing to assert that his force was institutionally racist. Assistant Chief Constable Lloyd Clarke however disclaimed any responsibility by stating that these racist attitudes were caused by the police (culture) who he blamed for often misleading senior managers. He said that;

"We acknowledge that as in all organisations, there are individuals who have racist attitudes in the police service. And our collective viewpoint can lead to our not understanding or to our misrepresenting racial incidents and ethnic minority opinions and expectations" (*Ibid*, p31).

The inquiry reflected on organisational matters that treated all people the same or 'colour blind' (*Ibid*, p23). One of Her Majesties Inspectors of Constabulary (HMIC) Mr Dan Crompton explained the 'colour blind' approach as:

"...all that is necessary is to treat everyone the same... (whereas) ...it might be said it is about treatment according to need" (*Ibid*, p23)

A 'colour conscious' approach which considered a persons origin, culture and beliefs would be more likely to satisfy the victim or witness and less likely to patronise, demean or discriminate. There were suggestions that such failure signified an 'institutional incompetence'; however this was quickly dismissed by the inquiry as an explanation. The Inquiry asserted that it was racism not mere incompetence which of itself can not account for the whole catalogue of failures, mistakes, misjudgements and a lack of direction and control which bedevilled the Stephen Lawrence investigation (*Ibid*, p29). Oakley also contended that this left a sort of 'institutionalised communication failure' between the police organisation and the black communities, where the former should have been more sensitive to the experiences not only of the majority but also to minority experience as well. Oakley further suggested that to overcome the problem a more enhanced standard of police professionalism was essential to meet the requirements of a multi ethnic society. The issue of stop and search was raised at the inquiry and a critique

is shown elsewhere in Chapter 7. Suffice it to say that on this specific issue the Macpherson Report maintained the same position as did the Scarman Report; that stop and search was required for prevention and detection of crime and should remain unchanged (recommendation 60).

The Inquiry made a number of recommendations in its final report, however they made only five recommendations with reference to Complaints and Discipline. The report highlighted the strong public expression for government to consider steps which ensure that serious complaints against police officers are independently investigated (Recommendation 58).

## CONCLUSION

This chapter considered the policing of black people from its earliest origins up until the present day. It showed the development of the black community in Britain and exploded the myth of mass immigration to Britain. The chapter developed the notion that black people were second class citizens or socially excluded and deserved to be policed by the dominant majority in a colonial repressive style than other people. Young (1999) refers to this population as the “outgroup” which includes a large section of ethnic minorities making for easy scapegoating and the confusion that the variety of class also means race (p20). The role of policing was exposed to show how the notion of policing by consent was relative according to diversity where the outgroup experienced suffering from indiscriminate focusing by the police whilst higher class white communities were approving and consensual of police tactics.

This section carefully thought about not only the deteriorating relationships between the black community and the police but also the downward spiral of dissatisfaction in legitimacy and public relations in general. The issue of police culture (a contested phenomenon) was discussed with reference to policing diversity showing how police view blacks negatively, with bias and in a colour blind fashion. It showed how police cultural perceptions of blacks as aggressive and provocative tended to prejudice their action; meaning that black people were stopped and searched disproportionately - as if crime was rooted within this section of the public. It projected the notion of a growing black alienation and social exclusion.

The chapter examined the wider police/black community relationship and found that disproportionality, over-representation and repeat victimisation were all hallmarks of black existence. The issue of urban unrest was also discussed, showing how the withdrawal of legitimacy by both the black and



white community expressed their anger and frustration in terms of violence, confrontation and riot.

The chapter culminated in a case study of community relations which resulted in a landmark Public Inquiry that caused the police to reflect on their organisational, cultural and individual responsibilities to the public they police. The public inquiry re-defined many issues and made a number of recommendations for change. The Home Secretary, the Rt. Hon. Jack Straw, has adopted these recommendations as a blue print for progress and development in the police service.

The whole notion of stop and search is a contentious issue and is discussed further in Chapter 6. It deals with the phenomenon from a historical, legal, organisational and individual perspective. It explores the notion of stopping the public as a tool of policing by examining its customs, agenda and cultural practices.

## CHAPTER SIX

### STOPPING AND SEARCHING THE PUBLIC

#### INTRODUCTION

This chapter looks at the impact of stops and search exercised under the Police and Criminal Evidence Act 1984 (PACE). This is done first by considering the background and historical legacy of stop and search powers nationally. It discusses the legal application of PACE from a macro and micro standpoint and deconstructs the legislation whilst emphasising consequences and concerns for police managers, practitioners and civil libertarians. This chapter explores the issues of police culture and role of police in terms of action, outcome and impact on the public. Within these notions the wider questions relating to disproportionate victimisation, public dissatisfaction and complaints against police are evaluated through the practice of stop and search. It contextualises how police discipline and complaints bring into focus the issue of control and accountability of the police. The key theme of the chapter shows that the “litmus test” of equality in policing is the issue of stop and search. As the notion of discretion is a major feature of stop and search practice its control is a major issue for civil libertarians. The dysfunctional effects when compared to the proportional representation of minorities in the population indicates to police managers the severe impact that stop and search powers have. Additionally the damaging effects of disproportionate use of stop and search which, when coupled with under use of the complaints process, tends to put a “stopper in the bottle” of fermenting discontent.

#### WHAT IS STOP AND SEARCH?

People are generally aware that the police have a legitimate right to stop and search them should the need arise, although these powers are frequently considered personal, intrusive and potentially frightening. This power is derived from legislation, primarily the Police and Criminal Evidence Act 1984 (PACE) although there are other statutes which carry the ability to stop and search for specific offences. The law says;

“Where a constable has reasonable grounds for suspecting that when in a public place a person has, or a vehicle contains, stolen goods or prohibited articles he may detain that person or vehicle for the purpose of a search”.(Section 1 Police and Criminal Evidence Act 1984)

The police consider the use of stop and search as an essential element in the fight against crime (Baxter and Koffman, 1985; Fitzgerald, 1999). Against this, civil libertarians question the effectiveness of these powers (H. Harman, 1982), which authorise an officer at street level to confront, inquisitorially question and interrogate before deciding whether to detain, arrest or prosecute. (Brogden, 1985, p93)

Furthermore the high level decisions on policing strategies, like stop and search, arouse the greatest public anxiety, especially when they concern control of the streets, demonstrations and other operations which have more to do with public order than fighting crime. Fitzgerald and Sibbet expressed the importance of stop and search by noting;

“Of the three main aspects of policing covered by the ethnic monitoring requirement of 1996, the question of stops and search has attracted the greatest interest from the police, politicians, the media and community groups alike” (1996, p39).

The Macpherson Report (1999) was particularly concerned with misuse of stop and search powers and referred to this issue in their final report, especially in how it affected people from minority ethnic communities. It stated;

“If there was one area of complaint which was universal it was the issue of stop and search. Nobody in ethnic minority communities believes that the complex arguments which are sometimes used to explain figures of stop and search are valid” (1999, p312).

## STOP AND SEARCH POWERS IN CONTEXT

Stop and search powers have evolved over time and are a phenomenon grounded in our historical past but formalised in Victorian legislation. Prior to the introduction of PACE there was no general or universal police power which authorised police officers to stop people or vehicles for the purpose of searching and seizing property. There was however stop and search legislation relating specifically to drugs and firearms. Traditionally, stop and search was a local practice, managed, regulated and controlled at station level. Here, not only was stop and search seen as a means to fight crime, but also as a method to gather intelligence, aid detection and clear up offences. These ad hoc powers lacked managerial influence and control, resulting in policing styles that targeted certain areas with indiscriminate over use of stop and search procedures. For civil libertarians this added to the general perception that the police were not accountable to the public. Indeed there

was little accountability upwards regarding this matter. Before 1984 stop and search statistics were not collated by Chief Officers in their Annual Reports to the Home Secretary. There was widespread public dissatisfaction with policing styles, especially a stop and search strategy called "Swamp 81" in Brixton, London in 1981, a zero tolerance solution which became the catalyst for rioting and disorder. This resulted when police stopped and searched some 943 people, arresting 118, resulting in only a small number of charges (75 in total). The public concern focused on the high numbers of stops and search of apparently innocent people, many of whom accept that crime on Railton Road was a difficult problem for police, not one perpetrated by the whole community, but by a small minority (Keith, 1993, p32). The expression of discontent by a whole community in Brixton was more to do with the joint issues of policing by consent and the withdrawal of legitimacy upon which the notion of policing by consent is grounded.

Until 1984 stop and search powers varied nationally according to geographical locale. In London, for example these powers derived from the Metropolitan Police Act 1839. In the counties some police forces relied on local council regulations or bye laws. These ad hoc powers were often unclear. If an offence had been suspected the police officer would resort to arresting the suspect, which may have involved the use of "Sus" in order that a search could be carried out. "Sus" was the offence of being a suspected person or reputed thief being in or on any highway etc. with intent to commit a felony, contrary to Sec. 4 Vagrancy Act 1824. It was against this backdrop that the 1981 Royal Commission considered police powers and criminal procedure and this set the agenda for much of PACE (Leishman *et al*, p48). Attempts to implement changes were thwarted by the dissolution of Parliament prior to the 1983 General election. However once re-elected the Conservative Government set about reconsidering the issue of civil liberties and police stop and search powers that culminated in the formulation of PACE.

It is worth restating that the introduction of PACE defined the rights of citizens who were stopped by the police, of prisoners detained at police stations, associated with the searching of premises and access to legal representation. These rules meant that any breach of PACE codes of practice could be dealt with not only according to law, but also and for the first time, against police discipline (Section 67). This dual liability intentionally placed constraints on the police in an effort to promote satisfaction and enhance public legitimacy. The codes are amended at periodical intervals without recourse to further legislation making this a live piece of legislation.

It is doubtful whether the police were prepared for this significant change in legislation since training support for street level practitioners, certainly as far as the Metropolitan Police were concerned, was insufficient and inadequate. It represented perhaps the most important change to policing since 1829. Even today there is widespread concern within the senior levels of the police that many street level officers are unaware or have insufficient knowledge of large sections of PACE. On the other hand the legislation appears intricate. This, coupled with a lack of training and practical understanding, may in part answer the criticism by explaining the high numbers of civil actions being conducted annually by dissatisfied complainants.

#### THE TEST OF REASON IN STOP AND SEARCH PRACTICE

The legislation for PACE was put together following extensive public consultation. Explicit legal precautions were taken to avoid such difficult matters as random searches, stereotyping and embarrassment of suspects. Civil libertarian concerns highlighted the need for reasonable explanations to be given by the police to those being stopped and searched. It was deemed reasonable for an officer to be in a position to provide at least six pieces of information to a suspect to justify a stop. PACE stated that this information should be as follows;

- i) The officers name
- ii) The name of the station to which he/she attached
- iii) The object of the search
- iv) The grounds of the search
- v) If not in uniform he/she must show warrant card
- vi) The entitlement of a written record of the search within one year.

Legislators ensured that the 'codes of practice' provided both sufficient guidance and warnings to practitioners thus;

"It is important to ensure that powers of stop and search are used responsibly and sparingly and only when reasonable grounds for suspicion genuinely exist. Over use of the powers is likely to be harmful to police effort in the long term as misuse; both can lead to mistrust of the police among sections of the community. It is also particularly important that any person searched is treated courteously and considerately if police action is not to be resented." (Codes of Practice, 1985, p 13/14).

On the issue of stereotyping the 'codes of practice' provides further warning;

“A person’s colour of itself can never be reasonable grounds for suspicion. The mere fact alone that a person is carrying a particular kind of property or is dressed in a certain way or has a certain hairstyle is likewise not in itself sufficient.” (Codes of Practice, 1985, p 20)

There is evidence to suggest that police have failed to heed this advice. The public are alienated by such police tactics (Brogden 1985, p100). A person being stopped has no right to refuse the stop, which is in essence a detention for the purpose of searching - a technical arrest - to gather evidence relating to a possible crime. Therefore stop and search seems to run contrary to the legal mode of due process with their safeguards for suspects and presumption of innocence. Instead, suspects face an accusatorial situation.

The illegal usage of the stop and search powers often attracted civil libertarian concerns where reasonable suspicion was not present. The ‘code of practice’ deals with this very problem and provides practitioners with another warning which indicates prior to a stop being considered, that high levels of discretion are paramount and “fishing trips” can not be sanctioned. The warning says that;

“Where an officer has reasonable grounds for suspicion necessary to exercise the power of stop and search he may detain the person concerned for the purpose of and with a view to searching him. There is no power to stop or detain a person against his will in order to find grounds for a search” (Codes of Practice, 1985, p14).

The term “reasonable suspicion” has attracted much criticism - paradoxically not only from practitioners who are required to implement it but also from civil libertarians who face the consequences of its misuse. It is with these concerns in mind that reasonable suspicion is critically reviewed.

## REASONABLE SUSPICION

Before a stop and search can be carried out the police or other enforcement officer considers the visible and observable actions of a person or suspect which determines what action, if any, is required. At this point the constable considers those actions in two ways, suspicious or unsuspecting. The latter requires no further action however the former relies on the degree of suspicion perceived. The law requires this to be reasonable, not just mere suspicion or doubt. Jefferson and Grimshaw refer to the issue of reasonable suspicion as founded on a constables “subjective judgement” (1982, p84). The decision is made on an individual basis, whether intervention is

necessary and discretion is applied at this very point, using a sliding scale of application depending on the particular circumstances. For example information from a citizen to intervene and stop a person requires low levels of discretion. This is because the suspicion is shared and split between both the complainant and police officer. A far higher level of discretion occurs in situations requiring intervention in stop and search practice when the officer is alone.

Thus discretion may be conceptualised into varying levels as a method with which to understand and evaluate the notion. Marian Fitzgerald sub-divided the concept of discretion in stop and search situations in her recent research entitled *Searches in London*, (1999) into high and low levels.<sup>1</sup> She defines low discretion as information obtained mainly from other sources like the public, police intelligence or activity in relation to a targeted operation (1999, p26). High discretion searches were defined as being driven by more proactivity - meaning that the search was reliant solely on the initiative of the officer without any outside information or intelligence.

The 'Codes of Practice' define the term "reasonable grounds for suspicion" as "not requiring certainty nor satisfaction beyond doubt, but that there must be some concrete basis for the suspicion". Mere suspicion was no longer enough for stopping people; decisions needed to be grounded in terms of objective facts respecting whether his or her action appeared reasonable (Polyvios, 1983). No longer was gut reaction, instinct or hunch (albeit essential ingredients for a modern day TV detective series) suitable as an initial factor for stopping and searching a person. Civil libertarians regarded the term "*reasonable suspicion/grounds*" in its traditional formulation with English law as too imprecise (Brogden, 1985), whilst orthodox liberals viewed the powers enshrined as unworkable, too vague, unnecessary and as harmful to more important policing objectives.

The legal formulation of reasonable suspicion has been expressed in terms of what police action should be. However often Judges accommodate police decision making within judge-made case law defining what it should not be. It does not mean for example; that the constable has to check the reasonable suspicion to the best of his or her ability, nor that evidence obtained in breach of the Judges Rules (Jefferson and Grimshaw, 1982, p84) or the PACE 'codes of practice', will be automatically excluded.

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<sup>1</sup> Dr. Fitzgerald acknowledges that the concept of high and low discretion was an approach originally developed by Superintendent Paul Curtis of Sussex Police in 1998.

Concerns about stop and search practices in London had been fermenting for some time. Among these concerns were the abuse of authority, being stopped for no reason and in an ad hoc manner, indiscriminately and selectively targeting certain sections of the public. The PSI report expressed concerns that in a substantial proportion of cases there did not appear to be good reason for the stop, but later they identified that a stop following a search gave them a chance of getting a result (Smith and Gray, 1983, p232).

Those concerns still persisted into the 1990's, because research still indicated that the power was being abused by the police.(Young, 1994, Fitzgerald and Sibbett, 1997) It was with regard to those concerns that the Metropolitan Police agreed to co-operate with the National Association for the Care and Resettlement of Offenders (NACRO) in a study of stop and search practice. The research was entitled The Tottenham Experiment (1997) and considered stop and search practice in two pilot sites (Vauxhall and Tottenham) over a twelve month period in London. The NACRO research developed a strategy which ensured that people being stopped and searched by the police were provided with better and more detailed information. A prepared leaflet headed Stop and Search. How and Why, was provided because it was felt that before a search was carried out the stopping officer had properly to justify himself to the citizen to minimise on the one hand, embarrassment and stress but on the other to legitimate his actions.

Raising the profile and importance of stops and searches during any encounter had civil libertarian benefits because it required officers to be more individually accountable. This process required police to justify and explain themselves more comprehensively than before and to provide people with information about their rights; in essence to have higher levels of discretion and suspicion before stopping someone. Previously, stops and search were unimportant, attracted little attention and could be done expeditiously however with the increased accountability it follows that time implications occur, resulting in fewer stops and a decline in arrest rates. Perhaps in this case quality prevailed over quantity?

After the experiment the final report showed that there had been a drop of 52% in stops and searches and also in arrests from those stops of 45%. These reduced figures were probably due to devoting more time to stop/search and increased individual accountability. The report concluded that the lower number of stops improved detection rates from 10 to 12% thereby improving the quality of stops. The report implied that police discretion affected both the quantity and quality of stop and search practice, meaning that better numbers require a higher quality of discretion and evidence.



To sum up the implications of “reasonable suspicion”; civil libertarians are critical of the concept, not only because of its abstract and imprecise nature but also because its application relies heavily on the use of discretion. Let us now turn from the legalistic parameters and recent concerns over usage of the stop and search powers and consider the issue of discretion which for many observers of police is the problem which lies at the very heart of policing. The use of discretion is unpacked and considered with reference to stop and search practice and within this context the application of discretion is considered a core factor to institutional police deviance.

## DISCRETION AND POLICEWORK

The 16th edition of the Vincent’s Police Code (1924) describes the notion of discretion and its application as follows;

“Much power is vested in the police constable and many opportunities are given him to be hard and oppressive, especially to those in custody. Pray avoid harshness and oppression; be firm but not brutal, make only discreet use of your powers. If one person wishes to give another into your custody for a felony you are not absolutely bound to arrest. You ought to exercise your discretion, having regard to the nature of crime, surrounding circumstances, and the condition and character of the accuser and the accused” (Vincent, 1924, pxiv)

Banton (1964) particularly stressed that the problem of police duty was the exercise of discretion in law enforcement. His research highlighted the resentment felt by some citizens against an individual officer’s judgement which was perceived as unjust in some cases, especially where a breach of the law for one ends in prosecution, whilst for another it results in a caution.

Discretion is not a fixity; it is the universal of police practice even in communal societies practising the gentle tyranny of informal social control (Fielding and Fielding, 1991, p39). The issue of discretion is a pervasive phenomenon - not fixed, abstract and undefined in terms of practical policing. On the one hand, tight inflexible rules of high discretion offer literal interpretations of behaviour that affords little compromise providing for all laws to be enforced equally culminating in a zero tolerance strategy of unworkability. On the other hand, low or too little discretion provides an unacceptable situation which spawns laxity, laziness and a don’t care attitude. Balance is the key as both extremes lead to anarchy as Kinsey *et al* point out:

**“In a perplexed society, extraordinary measures are required to hold the social fabric together and to counter the threat of anarchy. This is the job of the police who must make and maintain order out of chaos in which law is impossible” (1986, p166)**

**The reasons for exercising discretion can be described as the art of suiting action to particular circumstances. It is, as Lord Scarman put it, “the policeman’s daily task” (1982). Discretion is certainly more of an art than a science which means it is difficult to describe with any degree of scientific accuracy. However its interpretation relies heavily on moral and ethical principles. Discretion is inevitable and will always be a part of the enforcement role for society (Baker, 1985). Kinsey et al develop the same point, but for differing reasons, by suggesting that:**

**“The exercise of discretion is inevitable, given the limited resources available in any society. It is impossible to enforce all laws on the statute book or to pursue every person committing an offence. Priorities have to be decided upon. Once again policing becomes a matter of politics, given that there could never be enough police to deal with all crime” (1986, p167)**

**Law enforcement and all it entails impinges directly on the deeply prized values of life, freedom and human dignity. Unlike many other Government operations, the operation of legal sanctions becomes a forcible and unwelcome intrusion into the affairs and fortunes of all who are drawn into the arms of justice (England, 1976). Discretion is therefore dispensed at the cutting edge of social control.**

**Street level decision making requires discretion covering a wide variety of powers, however with these powers comes wide discretion and wide responsibility. This is the “*what to do stage*” where choices are made and one of a number of hidden constraints may influence the outcome of any interaction. Importantly the taking of no action is just as essential within the concept of discretion because it also covers the ability to choose from many alternatives.**

**In his book entitled Justice Without Trial: Law Enforcement in Democratic Society published in 1966 by Jerome Skolnick developed the notion of police discretion but in greater depth than Banton (1964). He did this by examining the working relationships within Traffic enforcement and observing interactions in controlled situations rather than the often chaotic situations street-level police officers found themselves dealing with. He selected two types of Traffic enforcement, namely Traffic Meter cops - who dealt with parking infractions - and Traffic Warrant officers - who dealt solely with whether or not to arrest for failure to pay parking fees. In this**

way Skolnick was able to explore working practices, relationships and the application of discretion within the work of both sets of police.

- He argued that the Traffic Meter cop used less discretion than the Traffic Warrant officer because of the latter's predisposition to people rather than vehicles and meters. The author observed that the Traffic Warrant officer's behaviour displayed elements of prejudice during interactions against black people although this was maintained in an even handed manner without confrontation. He also observed that the Traffic Warrant Officer had the power to arrest on the traffic warrant immediately however often the willingness and ability to pay up immediately precluded arrest. In this way the author noticed the use of "credit" which was applied by each officer that involved the accused attempting to raise the outstanding parking fees from friends, relatives and employers to avoid arrest. The use of "credit" was used within his frame of understanding and previous experience so that valuable time should not be wasted when considering the need to arrest. The Traffic Warrant officer often gave time to pay in those cases which had a high credit rating, meaning that he would wait whilst the accused obtained the cash to settle the warrant immediately. Skolnick concluded that the use of discretion was heightened by the increase in risk involved especially when dealing with situations involving public order. The Traffic Warrant officer's job involved very little risk in this regard however, for street level police officers risk and danger was substantiatially increased which brought a more punitive response from them. The less risk, the less authority, the more equal the response irrespective of race, colour, sex or social class.

The author also considered relationships that police had with the Prosecutors Office and the travelling public. He found that the Prosecutor's Office applied the most discretion because the street level officer just wrote the ticket whilst the prosecutor decided on whether or not to prosecute. Skolnick focused his attention on the interactions of police with another group of people - prostitutes. He observed that prostitutes existed through a system of rewards from the police which he described as beneficial to both, however any interference with police competence and goals attracted sanctions, like arrest or prosecution whilst assistance received rewards.

Skolnick also considered the shady world of the police informant - especially those involved with so called 'victimless crimes' - involving the supply of drugs. Informants had knowledge of drugs because they existed on the fringe or were involved in some way with supplying or making money from drugs. The informant knew about drugs and possessed a unique knowledge about the reality, understanding and details that were important

to police where information was traded for continued freedom - being treated in much the same way as prostitutes. In management terms such information raised the profile of the narcotics squad, whose job it was to enforce the law on drugs. Skolnick argued that the secretive and covert nature of this system hid from view what the police traded for such information, which gave certain informants (lawbreakers) a licence to carry on their illegal activities. Additionally the detective was aware of the risks associated with being an informant and this was minimised in a number of ways; by elevating his status, listening to his troubles, improving his social status and by protecting his identity. For the informant the dangers were high, however crimes without citizen complaints require an additional police response where under-cover cops and informants work jointly to circumvent not only the spirit but also the letter of the law. Skolnick found the issue of discretion to be highly problematic and difficult to control.

Kinsey *et al* (1986) consider the root questions of police accountability to be the limited efficacy of rules and the extent of discretion. They consider these questions within the context of three conceptions of policing, namely i) the liberal constitutionalist model of policing, ii) the market model and the New Right and iii) the left idealist model.

The liberal constitutionalist model assumes independence of the police within the orthodox conception of a separation of powers; a model favoured by Chief Constables that underscores political neutrality. The left idealist model views the police as the strong right arm of the state which exercises an exclusively political function towards criminalisation and repression of the working classes (*ibid*, p164). These differing perspectives offer diverse views on the concept and operation that is police discretion.

For liberal constitutionalists discretion is viewed as an aberration, a fault in a system where the law should provide for every eventuality. The very fact that it exists means that arbitrary justice is dispensed and the neutrality of the law is impeached. The left realist model considers the true nature of policing to lie in the gap between rules and reality. Discretion is therefore exercised against the working classes in favour of the powerful (*ibid*, p166). The market model views discretion as free choice and sees it is dispensed according to the rules of supply and demand. The models of liberal constitutionalist and left idealist share a profound distrust of discretion and seek to abolish it; however the latter recognise and accept its necessity. Left idealists recognise that discretion pervades the whole police organisation and its removal could severely constrain police action, a factor also recognised by

Kinsey and Young, who commented that given limited resources discretion was inevitable (1982, p121).

The police argue that the law is the law and that it is applied without fear or favour. Yet good policework demands a recognition of essential variations in the allocation of resources meaning that selectivity occurs. The ability to select how to spend essential resources through objectives and targeting remains the domain of police discretion at an organisational level, yet selectivity at street level it is based on past experience and common sense where police action allows for stereotypical focusing. The reason why this behaviour should concern us is not because the police have any special understanding of the criminal mind, but that law enforcement (detection, apprehension, interrogation etc.) tends to develop a negative understanding of people, which obstructs any sort of affiliation or association. Negative understanding leads to pre-determined social attitudes which labels and stereotypes people so that when police discretion is applied the chances are that the outcome will be a negative experience grounded in organisational deviance.

From an organisational perspective discretion levels are not equal throughout the police service because those who administer the law, like street level officers, have more access to discretion than say a Chief Officer or detective. The further down the organisation one goes the more discretion there is. Detectives have less discretion than a street level officer because they try to fit individual behaviours into tightly defined legal frameworks or laws. In this way it ensures that aberrant citizens are charged and sent to court. Discretion is therefore dispensed vertically and laterally within the police organisational structure.

J. Q. Wilson (1968, p24) argues that discretion lies at the heart of the problem often exercised in an emotional, apprehensive and perhaps hostile environment. He suggests further that interactions other than routine ones are doomed to failure. He adds;

“Even though the vast amount of Americans report in opinion polls that they think the police are doing a good job, are properly respectful and are honest, and even in those neighbourhoods- middle-class ones, especially white middle class ones- where sentiments favourable to the police are most widespread, police-citizen contacts in any but routine matters are likely to leave both parties dissatisfied”. (Wilson, 1968, p24)

This may explain in part why public expectations often exceed what the police are able realistically to deliver. Public expectations pre-suppose that the relevant legislation or policy is present to deal with the issue, causing

some observers to comment that often street level police officers encounter areas of policy vacuum in which there are no clear policies or procedures defined (Smith and Gray, 1985). This may be the gap between rules and reality (Kinsey and Young, 1982, p120) but also many of the complaints arise in areas in which there is no consensus about proper police practice (Barton, 1970, p462). The law seems intentionally vague and ambiguous on many issues that confront legal actors like the police (Shearing, 1981, p10). Very often by design these general rules or policy vacuums leave problems of definition; policing domestic violence for example, where low level police discretion and the lack of clear legislation in the past meant that nothing was done. Deficient legal sanction and policy vacuum mixed with creative police discretion is likely to attract organisational police deviance. This occurs where decisions to arrest may be described as extra-legal in both cause and consequence, especially if its usage is dependant on criteria which is not specifically authorised by the law. Therefore extra-legal usage does amount to police deviance and malpractice, a factor stressed by Lundman who argues that;

“Abuse of discretion exists when police patrol officers base their decision on factors... such as behaviour or demeanour of suspects that is not part of the criminal law”(1980, p5)

A suspects movements and demeanour may, in the eyes of the police, amount to mere suspicion but do these actions amount to reasonable suspicion? To some critics, like Glanville Williams, the issue is not about what constitutes the appropriate level of suspicion, but has more to do with the erroneous assumption that the police are “empowered to search anyone whose behaviour is at all out of the usual, even though they have no solid ground for suspicion” (Williams, 1960, p606). To stop and search people with no solid grounds for doing so constitutes an abuse of authority and police malpractice. The police balance the odds according to risk and justify these deviant actions in one of two ways. Firstly, if an arrest for a crime has occurred then their hunch has paid off and secondly, by arguing that they themselves are beleaguered, part of a minority, excluded and socially isolated from everyone else so legal and extra legal methods ensure the job gets done, (Shearing, 1981) or put another way, the ends justify the means.

Cicourel considered encounters like stop and search in his classic study of juveniles and their interaction with police which he summarised as follows:

“The initial search procedures combine with prior assumptions and information to give the scene structure, but body motion, facial expression, voice intonation, and the like, can make problematic the routine use of social and legal categories and alter or push the

interpretation of events and objects into categories calling for more or less serious action” (1974, p86).

Enforcement officers consider the visible and observable characteristics of a person or suspect which determines what action, if any, is required. This is pre-determined according to the general understanding and interpretation of events within the mind of the observer. The range of understanding considers everyday categories like the ‘strange’, ‘unusual’, ‘wrong’, ‘routine’, ‘normal’, ‘harmless’, and ‘right’ which cannot be understood without reference to ‘normal rules’ and theories utilised by officials (Cicourel, 1974, p85). The presence of a person at a particular location at a particular time, and that persons appearance, demeanour or ‘gait and manner’ can constitute evidence of reasonable suspicion, apparently in connection with certain stop and search powers. (Leigh, 1975).

The police, for example, tend to categorise or stereotype certain sections of the public based on shared experiences with these groups, so they see enough in common to classify their relationship with them. This shared understanding is often re-enforced through the police culture, and automatically labels these groups as deviant and rather than deal with them as individuals according to each situation, they are resolved in a stereotypical fashion. For example the police use the term “rough” which they explain as;

“...people who were different and had to be treated differently: You can’t go to the book all the time. You’ve got to talk to these people in a way they can understand... Given their belief in the essential difference of ‘the rough’ policeman can not help but be ready for cues in the response of these people which seem to demand tough handling. They may also adopt a stance which solicits aggression. They thus tend to find evidence which reinforces their assumptions” (Cain, 1971, p82)

Police decision making is likely to be constrained by a variety of organisational and legal considerations such as the criminal law, internal regulations, the police discipline code and management policy decisions. These considerations may need to be explained at some later stage (*post facto*) because faulty decision making on the part of the constable may lead to an internal investigation, where disciplinary action, and dismissal may be the outcome. It is at this point that police deviance is considered from its legalistic and ethical standpoints by those appointed to review police behaviour.

Some theorists refer to the misuse of police discretion as “*structured deviance*”. Mann and Lee, explain the concept as a set of social conditions

that are so arranged that the officers involved are vitally pushed into frequent deviant behaviour (1979, p19). Structured deviance is less the product of conscious choice by the people involved but more about the structure of policework and social lives.

Broad discretionary powers, rather than tight inflexible rules, together with both the complexity of the law enforcement role and the kind of people with whom officers continually come into contact, all add up to placing some officers in a highly vulnerable position (Moore, 1992). Additionally, formal rules can not make allowance for individual differences and variations in conditions, because, as Kinsey and Young legitimately point out;

“The theft of Five Pounds from a pensioner is substantively different from theft of Five Pounds by a pensioner” (1982, p121)

Some officers surrender to the many temptations and have become corrupt, while others have engaged in different types of malfeasance. Examples of this type of behaviour include abuse of both the power and authority of office for personal gain and unlawful use of force. Further examples on this sliding scale of aberrant police behaviour include illegal stop and search, planting evidence and perjury (Skolnick and Gray, 1975).

There are civil libertarian concerns that use of discretion during a stop and search may be a pretext for some other reason, illegally gathering information and intelligence which they see as essential for surveillance of the working classes. Fitzgerald suggests that the public understanding of stop and search practice blurs with proactive police use where the dividing line of acceptable action is difficult to draw. (1999, p42) The police criteria for proactive use of Section 1 PACE powers is summed up as follows;

- 1) That crimes can be tackled which seriously concern the public.
- 2) To boost police performance about minor crime which the public are indifferent about.
- 3) For gathering intelligence.
- 4) For preventing or detecting crime on a specific level.
- 5) As a method of social control, for example by breaking up large groups and preventing disorder and crime by removing blades, knives and other sharp objects.

Fitzgerald suggests that there should be a greater understanding by the public of police powers and the use of discretion. Furthermore that there should be a greater tolerance of pro-active police approach in respect of stop and search



practice generally. Lustgarten's (1986) conception of discretion is at odds with this view because he understands that,

"where the exercise of discretion is possible, for the most part this is in the direction of lenience. The police choose not to exercise their powers fully in many situations and they may prefer to deal with matters informally for two main reasons. One is to avoid unnecessary conflict with the public, thereby investing in improved community relations in the context of their responsibility for keeping the Queens Peace. The other, more self interested incentive is to keep bureaucratic demands to a minimum, especially if officers think the eventual outcome will contribute little to meeting either their own personal objectives or those of the force." (1986, p95).

Some critics argue for a more rigorous control of discretionary power where suspicion relies heavily on justification. For example Young's Policing the Streets (1994) outlines three police methods used which determine 'suspicion' before people are stopped and searched. These are 'stereotypical', 'democratic' and 'information led' suspicion. Stereotypical focusing leads to low yields of information for the police because it alienates the very people who possess information about crime. Democratic suspicion suspects every person, group and sub group equally. Young (1994) and Fitzgerald and Sibbett (1997) concur, that both methods are unfeasible and illogical although the latter authors recognise that the police could not do their job without being selective in their suspicions. Mooney and Young (1999) argue instead for suspicion to be determined by hard evidence, which in their view would reduce the chances of public alienation and increase the flow of crime information.

The notion of discretion has been critically evaluated from a legal, political, individual and organisational viewpoint. It shows the phenomenon to be imprecise and identifies some of the weaknesses it possesses. So when police action enters the outer limits of discretionary practice where public disapproval exists yet legal redress is lacking there are few formal safeguards for the citizen; the power remains with the police to decide what to do, firmly rooted within the imperfect market model of policing.

## THE POLICE CULTURE

The police are the gatekeepers of the criminal justice system, controlling the entry point by determining whether individuals are either screened in or out of the criminal process. This involves the making of choices and use of discretion regarding processing or disposing of discrete, isolated events or individuals on the street. Is it as Manning and Hawkins suggest; that police

discretion and action grounded in the police culture is a phenomenon unencumbered by organisational and legal control? (1989, p139).

This section argues that police action is often guided by cultural perceptions and yet questions the existence of the police sub-culture as a homogeneous monolithic structure. The police culture is evaluated within the specifics of role and action.

What do we understand from the term sub-culture, and what does it mean? The term “culture” is defined as;

“Culture is a collective noun for symbolic and learned non-biological aspects of human society... (which shares) language, custom and convention by which human behaviour can be distinguished from that of other primates. This also includes the culture of social groups with its set of beliefs, customs or way of life” (Abercrombie *et al*, 1994, p98).

Previous research suggests that the sub-culture is some sort of monolithic colossus, impervious to influence and control, which has been broadly sustained by the notion of Constabulary Independence and the fact that police officers are only really accountable to the law (Holdaway 1977, McConville and Shepherd 1992). Shearing (1981) contends that the police culture acts as a mechanism that directs and co-ordinates police action so as to produce structures of dominance in two ways:

“First it encourages them to support the productive classes- referred to as the public- in their struggle with the un-productive ‘lumpen proletariat’ referred to in a variety of derogatory epithets such as ‘the dregs’ or the scum. Secondly it defines the formal values supposedly governing the police organisation (both the legal system and departmental policy) as no more than a normative framework to be used in the legitimisation of police action”. (Shearing, 1981, p29)

Shearing implies that the police select those from the underclass who they control via domination, harassment and subjugation. They use all the legal, political and policy means available to maintain order.

Latterly police managers have overtly and covertly wrestled with the relative strength of police occupational culture which has been described as “the Berlin wall of policing” (Savage, 1991). There is an extensive, even voluminous library of comment on the phenomenon. Waddington (1999) in an interesting article in the British Journal of Criminology entitled “Police (Canteen) Culture- An Appreciation” challenges the static causal notion of the police culture employed by some researchers who portray the police in a

malign and pervasive way, often blaming them for some of societies ills e.g. for a failing system of criminal justice. He suggests that there is a wide gap between chatter and reality by stating;

“There is little relationship between privately held views of police officers and their actual behaviour on the streets, it appears that the concept of the police occupational culture contributes little to the explanation of policing” (Waddington, 1999, p289).

In other words talk constitutes much of what passes for police sub-culture but provides little explanation of police behaviour. It is too simplistic to suggest that within the static causal model of police sub-culture that it is resistant, obstructive and awkward when it comes to innovation and change.

Waddington argues that explanations of the police sub-culture are far more complex when seen in the light of the relationships that exist between insiders and outsiders. For example the police sub-culture is not a cohesive group of police officers who share the same values, meanings and beliefs but a myriad of sub-cultures like the Special Patrol Group, Territorial Support Group, Detectives, Specials, Traffic Division, Dog handlers, Community officers, and Mounted Branch etc. The evidence tends to suggest that police sub-culture shares artefacts (or common traits) yet when the innumerable cultures are counted this notion almost disappears (1999, p290). Waddington further suggests that the police sub-culture is a sociological construct created by observers so that stereotypical labels can be attached to occupational behaviour.

He contends that the static causal model of the police sub-culture fails to recognise the cultural diversity and dynamic process where action and culture are imagined to influence each other.

## THE ROLE OF POLICE

The role of police was originally identified by Banton (1964) who suggested that the status of police officers within society placed both obligations and privileges upon their personal position and that of their families. These restrictions placed the role of the police officer in society into context. Banton further suggested that Britain was over-policed and that many policing problems being experienced in America would find their way to Britain. Banton recognised that the future role of the police would have to cope with the increased antagonism of some motoring offenders and the spread of juvenile delinquency. The research showed a need to develop the

role of the police within an ever changing society and evidence was presented to indicate that further research into this aspect was crucial. Banton made it clear that in a changing society the police need to change and adapt according to the competing demands made on their role and function.

Maureen Cain's (1973) comparative analysis of a city and rural force in England and Wales entitled, "Society and the Policeman's Role" expanded the work of Banton on police culture. Like Banton, Cain considered the role of policing which also took account of police wives, children and other members of their family. The research demonstrated a more comprehensive study regarding the organisational, cultural and individual perceptions that made up the police as a homogenous group.

In terms of complaints Cain showed that police managers condoned violence and misconduct by their officers because it was recognised internally that a word in support from an intermediate or senior officer could prevent the matter (allegation or complaint) going any further (ibid, p161). Protection and support by senior officers of their workforce was an important consideration for police officers, irrespective of whether or not the allegations were true and often ensured the complaint was not accepted or investigated.(ibid, p161).

The role of Senior Officers involved the internalising of complaints against their officers by shrouding them in mystery and secrecy, away from the prying eyes of outsiders. This required a strategy of, support, assistance and backing for their officers on the one hand whilst to complainants the tactics of denial, secrecy and discouragement were introduced. This enabled Senior Officers to present a sympathetic front to complainants yet privately give support and backing to their men, in order to resolve complaints before they went too far. Cain further implied that routine infringements of discipline or matters which were proven or brought the force into disrepute were dealt with officially and, depending on the degree of likely exposure to public censure, very severely (ibid, p245). This infers a collusion and co-operation as far as complaints are concerned but only up to a point. Holdaways' (1983) research Inside the British Police also enforced this point. Holdaway suggested that senior police managers have often known the extent of police violence, complaints and general misconduct, but have tended to turn a blind eye in favour of getting on with the 'real job of policing'. The low visible nature of policework tends to exclude the outsider from seeing over zealous police behaviour except perhaps at pre-arranged demonstrations, political protests and sporting events where maintenance of order is necessary. This

often provides the media cameras with ample material that satisfies public appetite for sensational headlines and news in search of 'good copy'.

#### SUB - CULTURE AS ACTION

Skolnick (1966) described police officer's social isolation, professional isolation, racial bias, moral attitudes and integrity. He showed how the role of the police survives the competing and restricting demands made by organisational, political and legal requirements.

Skolnick claimed that law and order did not necessarily go together and their common juxtaposition was an "over simplification". Law was not merely an instrument of order but may be its adversary. Skolnick further added that, "The totalitarian social system is a situation of order without rule of law" whereas in a democratic state the police may have to break the law in order to enforce it. This study was a sociological attempt to understand how governance may be enhanced or impeded. This occurs by examining the behaviour of legal actors (the police) who come to interpret the rules of constraint which gives life and meaning in analysing the political dilemmas they face.

The study focuses on what social purpose and what value police serve in a democratic society. It poses the question whether the police are purely agents of social control or is their relationship with the law a factor which reduces social order rather than maintaining any form of control of it?

On the one hand the United States, like Britain upholds a system operating under the constraints of the rule of law whereas on the other, the nature, character and goals of the system itself may not necessarily be reflected in the good or bad behaviour of an individual. Put another way, it is the police not the system which decides what laws to enforce, against whom and under what circumstances. Skolnick suggests that "Society creates conditions which undermine the capacity of the police to respond to the rule of law" (p6). This factor is connected to the main conclusion which Skolnick summarises as

"The police in a democratic society are required to maintain order and to do so under the rule of law. As functionaries charged with maintaining order they are part of a bureaucracy. The ideology of democratic bureaucracy emphasises initiative rather than disciplined adherence to rules and regulations. By contrast the rule of law emphasises the rights of the individual citizens and constraints upon the initiative of legal officials. This tension between the operational consequences of ideas of order, efficiency, and initiative,

on the one hand and legality on the other constitutes the principal problem of the police as a democratic organisation” (Ibid, p6)

Skolnick examined the nature of relationships within the police, its culture and the judiciary by exploring the exclusionary rules imposed on observed police practices and the methods employed to circumvent them. He suggests that;

“The legal enforcement of conventional morality therefore provides the most pertinent setting for analysing the processes through which the effectiveness of judicial controls on police behaviour is neutralised” (ibid, p205).

Skolnick found that the police interpret their fundamental duty as the discovery or removal of the threat of crime. They are bound by an obligation to remain within the bounds of legality where the hierarchy of values, and the exclusionary rules of judicial controls are best understood when examined through the filter of the police culture. Here these procedural rules are something to be observed rather than obeyed. The rights of the citizen and the judicial right to exclude illegally obtained evidence is balanced against the institutional and cultural notion that it maintains; the ends justify the means. Additionally, policing seems to be thwarted both by politicians and the judiciary where the former are concerned with police performance through figures whilst the latter inhibit this process via exclusionary rules that constrains the police fight against crime. Regulating bodies are inevitably viewed with hostility by the regulated.

There are two sets of ideals that the police must reconcile. These contradictory demands are the need to remain within the law and the need, on occasions, to solve crime by whatever means possible. When the police working culture subscribes to the notion that the ends justify the means then the police will be corrupted by satisfying and solving crime no matter what civil liberty has been breached. They justify this position with the idea that the noble cause is to ensure the guilty do not go free.

Those who accept the existence of the police sub-culture suggest that it collectively forms opinions, explanations and attitudes on a wide range of policing problems. Also these notions pre-suppose group norms, expectations and individual preferences which determine police action and behaviour. This means that it is viewed by insiders as a source of direction and guidance- ‘the rules of thumb’ of police work (Shearing 1981, p30). They share a common

language which several writers have attempted to interpret.<sup>2</sup> These pre-conceived attitudes are formalised into instantly perceptible blue prints or stereotypes which enable and assist the individual officer to deal with problems and conflicts quickly and expeditiously.

The nature of the police role and its connection with violence caused the author to consider the police *working personality*. Skolnick suggested that;

“ The policeman, because his work requires him to be occupied continually with potential violence, develops a perceptual shorthand to identify certain kinds of people as symbolic assailants, that is, as persons who use gesture, language, and attire that the policeman has come to recognise as a prelude to violence. This does not mean that violence by the symbolic assailant is necessarily predictable. On the contrary, the policeman responds to the vague indication of danger suggested by appearance. Like the animal of the experimental psychologist, the policeman finds the threat of random damage more compelling than a pre-determined and inevitable punishment”. (1966, p45)

Skolnick considered the police working personality from a cognitive perspective in order to enable him better to understand the practical dilemmas. He suggested that the job of policing was more than just a job but was an occupation where the joint factors of danger and authority contribute towards the police style of life. The element of danger with its excitement and potential for violence and law breaking caused police to be suspicious. Danger was linked to authority because the latter re-enforces the aspect of danger by imposing morality on citizens when they are directed to comply. Some citizens, of course, only responding when they are in danger. The element of authority isolates the police from the less desirable sections of the public.

The police often argue that they are on their own, beleaguered and isolated; which is often justification enough for deviations from legal and organisational rules which ensures that the job gets done. The police often claim that the job makes the personality which infers that they are brutalised by the very people they police and constant contact makes them tough (Sheering, 1981b, p67). It is argued that the working environment of the police is charged with emotion and suspicion, it is often in the eyes of the police, hostile and uncooperative (Wilson, 1968, p27).

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<sup>2</sup> There is a complete lexicon of language used by police which incorporates Cockney rhyming slang, Yiddish and other sayings in *The Signs of Crime* by David Powis 1977. These words are often taken from police experience and contact with the criminal classes.

The sharing of fixed meanings are dominant features of the culture. The culture is continuously re-enforced and meanings are regularly restated, often during rest periods and even when off duty - where police officers indulge themselves in "*one up stories*". Waddington expresses this as, "the Rhetoric as sub-culture" where much energy is expended on talk in what he refers to as the repair shop of policing. Here officers retail versions of events (war stories) that re-affirm their world view and jokes, banter and anecdotes form the tools (Waddington, 1999, p295). These stories focus on the perceived and often blurred or gilded reality of collective experiences where talk is based around the unexpected and the sensational. So many exceptions abound and the only rule they prove is likely to be 'there's nowt as queer as folk' (Fielding et al 1991a, p39). To some outsiders criticising police banter fails to consider the beneficial aspects of talk which aid officers in coping with the daily stresses, strains and trauma; a product of an ever changing and increasingly complex society.

The occupational culture operates within the hierarchical structure of the police and is prevalent at all distinct levels and pervades all specialisms. For example the Criminal Investigation Department (CID) perceive themselves as professional and exclusive detectives of crime. These characteristics imply elitism with its particular brand of culture that includes shady dealings with informants and villains an arena that has attracted the most criticism, especially in terms of corrupt practice.

Talk, Waddington argues, further re-enforces the dillusionary self image of the police as crime fighters when paradoxically they;

"have very little impact on crime rates, are responsible for discovering few crimes and detecting fewer offenders, do not spend much duty time on crime related tasks and so forth". (1999, p299)

At Senior Officer level, (another police sub-culture) where policing policies are formulated, widespread concern and often blame is levelled at the canteen culture for the failure of some of those management policies- a decision making process which lacks any form of consultation. This tends to suggest that there;

"is a resistance at lower level rank and file to the objectives of managerial professionalism". (Holdaway, 1977, p207)

Widespread concern exists about the police canteen culture both inside and outside the service. Empirical evidence suggests that in the face of adversity- when things go wrong, the police close ranks. For example such groups as



the Special Patrol Group (SPG), who were the Metropolitan Polices Riot squad, displayed a particularly extreme form of police culture. This employed heavy handed tactics often implying by its results that the end justified the means. For example in the 1970's and early 1980's the SPG had earned themselves a reputation because of their particularly violent policing style and they were often called in to any flash-point or large disturbance to ensure that order and peace were kept. They were deployed at all of the major centres of disturbance since they were formed from Grunwicks (1977) Lewisham (1977) Southall (1979) Brixton (1981 and 1982) not to mention the annual Notting Hill Carnivals. These tactics by the SPG led indirectly, to the death of Blair Peach in a Southall street (Hain, 1980). To date no Police Officers have been charged with his death, a factor widely seen as the result of closing of ranks in the police culture.

Another example of closing ranks occurred in Holloway in 1982 known as "the Holloway van incident" where several black youths were detained, unlawfully assaulted and then released. This led Neil Walker to comment that;

"The whole affair was persuasively diagnosed by one commentator as an extreme and unintended consequence of an innovative management culture which stressed the virtues of delegation and the self regulation of work groups within a broader framework of rational goal setting" (Stephens *et al*, 1994, p51).

These incidents tend to portray the police in a bad light, as instigators of violence and brutality on the less powerful. Waddington challenges the notion that the police are a violent powerful fighting organisation (supported also by Smith and Gray (1983) in the Police Studies Institute Survey of the Metropolitan Police). Researchers attribute glorification of violence by the police as a sub-cultural characteristic that takes place in canteen banter. However, this glorification fails to translate itself into action because police goals seek the avoidance of trouble, (Chatterton, 1979, 1983, Norris, 1989) a factor which goes almost un-noticed and also unacknowledged (Waddington, 1999, p302). However there is a perception that if force is used then prejudice induces a heavier than normal response. Friedrich (1980) comments whilst the difference between prejudiced and non prejudiced officers was small, "the more prejudiced the police are, the more likely they are to use force against black offenders" (p90).

The apparent combination of low visibility police work, rank closing, structural police deviance and lack of personal accountability at street level can hardly fail to attract disapproving or critical comment. The greatest

contemporary problem of the police sub-culture is the issue of race which requires separate and individual comment.

#### **PUBLIC DISSATISFACTION**

On behalf of the Metropolitan Police the Policy Studies Institute (PSI) carried out research against a background of rising tensions within London's community, especially the minority ethnic community, who felt increasingly marginalised. The main causes of concern included misleading crime figures produced by the Metropolitan Police that rooted criminality in the black community, a Home Office study on Racial Incidents which prompted new reporting arrangements, improved consultation and investigation. Furthermore, the BBC "Fly on the wall" documentary of the Thames Valley Police attracted very large audiences and critical comments from the press.

The 1983 report contextualised the issues of policing a diverse population. It considered police behaviour generally; including police violence, misconduct and complaints. It was concerned with relationships between the police, members of minority ethnic groups and the public at large. There were four separate research strategies in the plan. There was a survey of Londoners, a participant observation of a group of young black people, a survey of police officers up to the rank of Inspector and a study of the police organisation and observations which focused on their interactions with the public.

The PSI voiced concerns about crime and police performance which showed that a large body of Londoners, particularly women, were concerned with street safety at night. The public were seriously concerned with fear of crime, with the police being perceived as losing the fight against crime. However victims of crime tended to have a greater confidence in police performance. The report showed that the police had come into contact with large numbers of the public in the preceding twelve months with half of Londoners having spoken with a police officer and 23% indicating three or more encounters. Some 27% of Londoners had been victims of crime and in the main they concluded that they had been treated well by the police. However the observational study seems to conflict with the survey results. Satisfaction with police services had been expressed by a large number of victims of crime; however the surveillance appeared to reflect another perspective. For example a response to victims relied on the social status according to whether the victims were deemed deserving rather than deviant, crazy rather than confused or just simply the cause of their own problems

(*ibid*, p573). Stops and searches tended to show a poor strike rate often with results displaying no reason for the stop. It showed significant effects on peoples relations with the police. The results also showed that one quarter of arrests came about as a result of a search.

In terms of ethnic relations, the research found that compared to whites, there were extremely high levels of police initiated contact between police and young people of West Indian origin (70% compared to 14% for the general population). This resulted in proportionally greater numbers of stops and searches involving West Indians. The authors showed that the relationship between police and public varies according to different population groups. The research also showed that age had an even stronger influence than ethnic origin with young people and people of West Indian origin tending to be more critical of police than white people. In general terms however racial tensions and the racist nature of the police culture were both lower than was to be expected (*ibid*, p587).

The PSI Report contained a critical appraisal of complaints against police from a public perspective which showed that the public were generally supportive of the system, irrespective whether they had used or experienced the process (*ibid*, p244). It is true to say, however, that they were not concerned with the failing complaints system or public knowledge of it, but more about general police/public relations. In conclusion the authors recommended a strengthening of the independent element to the complaints process (*ibid*, p599).

Public dissatisfaction with the police is dealt with formally through PACE and the police complaints system. Not surprisingly the Lawrence enquiry were universally told that there was little confidence in the present system amongst minority ethnic communities. They found that the lack of confidence adversely affected the atmosphere in which racist incidents and crimes are addressed and that the importance of public disquiet must not be under-estimated (p315). Lack of confidence in the complaints process leads to small numbers of complaints and ever growing public dissatisfaction. Public dissatisfaction leads to disaffection and alienation, and can lead to calls for greater control of the police. This is often marked in times of crisis for the police with either the introduction of a Royal Commission or the implementation of regulating legislation like The Police Acts 1964, 1967, 1976, the Police and Criminal Evidence Act 1984, the Police and Magistrates Courts Act 1994, the Police Act 1996 and Police Regulations 1999. Each piece of legislation has tended to follow scandals or *causes*

*celebres* that have attempted to constrain and regulate police practice with a view to even greater external influence and control.

Critics have often considered the impact of stop and search practice on the public. Even the PCA have highlighted problems when they expressed concern regarding stop and search complaints in 1995, 1996 and 1997. Even in its 1996 Annual report they specifically focused on policing diversity by stating that;

“Complaints resulting from the use of stop and search powers amounted to 13% of all cases considered during the year. This was a fall of 2% compared to 1994-5. However, the proportion of these complaints which were made by black people rose from 22 to 29%. Stop and search accounted for a quarter of all cases involving black complainants” (p19).

The PCA analysis showed that the Metropolitan Police accounted for 51% of all these stop and search cases during the year or put another way 79% of all stop and search complaints originated from black and Asian people. The indication here is that whilst complaints made by white people resulting from stop and search are on the decrease, there was a significant rise in black and Asian complainants. Often people are stopped for little or no reason so The Tottenham Experiment, (1997) recommended that the term “reasonable suspicion” should be re-defined and clarified to make it more positive.

In the late 1980's the Metropolitan Police attempted to deal with a number of policing issues including the police sub-culture by changing policing styles more suited to public expectation. This had come about as a result of recommendations taken from the Operational Policing Review (OPR) (1990) an independent study sponsored by the Association of Chief Police Officers, the Superintendents Association and the Police Federation. Among the recommendations was the need to introduce 'Community or Neighbourhood Policing' measures. This allowed police managers to implement new styles of policing along these lines and move away from Relief Policing with its three shifts per day. Relief policing was widely perceived as the manifestation of police canteen culture. Further efforts which ensured enforced transfers for all sergeants and constables were implemented in the mid 1980's but later phased out because of Police Federation pressure reflecting its unpopularity with the rank and file. This was later repackaged and re-named 'Tenure' and aimed to transfer officers up to the rank of Inspector, CID officers and others in specialist departments like SO19 (Firearms). Apart from being seen as a method to deal with the police culture its was also designed to combat corrupt practice especially amongst the CID.

This policy was implemented in 1996 and soon became very unpopular leading directly to a worsening of morale.

The hidden agenda of community policing, enforced transfer and tenure for some senior police officers offered a possible antidote to the impervious police sub-culture. The new Metropolitan Police commissioner John Stevens has already indicated that tenure has failed and it is his intention to cease this practice forthwith.

#### THE CONTROL OF DISCRETION

A central theme of this chapter has been the notion of discretion and its control. The conception of Constabulary Independence with its particular formulation within English law limits any formal control regarding police discretion. The mechanisms of police decision making are made on two distinct levels; policy and individual levels.

Policy decisions relate to organisational goals whereas individual decisions occur in respect of policework on a case by case basis (Reiner, 1997, p1024). Discretion is utilised at both levels, to formulate policy and during practical application of those strategies at an operational level. Problems at street level are translated into problem solving policy that help to resolve these operational issues. Discretion affects both the policy maker and the street level practitioner in a way that lacks any real restraint. Discretion is often employed to hide extra legal-practice and misuse of power not condoned by police managers. The perceived role of the police and the nature of working practices, culture and competing demands all provide for a situation where the rule of law is acknowledged but not necessarily obeyed. Policy accountability is also limited. Policies are structured by management styles and developed by the Chief Officer of the Force concerned, meaning that no complaint can be made in respect of these because disciplinary controls are restricted to individual behaviour, not management policing strategies.

Formal accountability exists where police officers are answerable before the courts (both civil and criminal) and also to the quasi-legal system that constitutes the complaints process. Courts decide on the way police officers exercise their powers and achieve their duties. However this is in itself problematic because it restricts any form of legal scrutiny if matters are resolved without recourse to jurisprudence e.g. by formal cautioning for a minor offence. Otherwise these matters involve cases or arrests before the criminal courts where legal control is exercised through statute and case law.

Additionally formal accountability appears also to be lost at the level of complaints, simply because the police investigate themselves, record the investigation and decide on further action. Add to this the reluctance and apathy of disaffected members of the public to complain and seemingly high levels of police deviance is apparent.

## CONCLUSION

This chapter considered PACE in respect of stop and search practice and showed how discretion was applied to decision making at legal and extra legal levels. Safeguards for members of the public, suspects and prisoners were built into PACE legislation to balance adequate police power with citizen's rights. It showed how this was achieved by creating 'Codes of Practice' to limit or control police discretion and also to provide a more robust method of individual accountability that involved enhanced record keeping to guard against allegations of police malpractice.

Within this discussion the legal notion of 'reasonable suspicion' was critically evaluated showing the phenomenon as ambiguous, imprecise and erroneous; requiring wide discretionary application where the law is inadequate or where policy vacuums exist. Discretion was also evaluated with reference to the police sub-culture where both group and organisational pressures tend to predict certain behaviour in the police. These particular behaviours relied on discretion and stereotypes and their outcomes depended upon whether or not they were dealing with the productive classes or the "lumpen proletariat". There were two sets of opposing ideals that the police must reconcile. These contradictory demands were the need to remain within the law and the need, on occasions, to solve crime by whatever means possible. When the police working culture subscribes to the notion that the ends justify the means then the police will be corrupted by satisfying and solving crime no matter what civil liberty has been breached. They justify this position with the idea that the noble cause is to ensure the guilty do not go free.

The discussion showed that there was little confidence in the complaints process, few safeguards and virtually no redress. The problem of discretion is its ability to mask malpractice and misconduct applied at street level is restricted by the low visibility of police work where close supervision, observation and control is impossible.

Discretion was also assessed with reference to both policy matters and individual behaviour however the balance of accountability seems to work reasonably well when members of the public are happy and content. However the problem remains: How are the police answerable when the public are not content?

These problems have caused police managers to raise the profile of operational street level police work by a series of informal management controls like community policing, tenure and a move to strong management.

Stop and search practice appears to be failing to achieve not only police objectives as an effective tool in the fight against crime and control of the streets but also public expectations where police work should operate in an independent dispassionate manner. The police craft is played out in each individual interaction often at night and in dark places out of public gaze. By their very nature these interactions are of low visibility. This means that the interactions fall prey to the whims of police officers according to who they stop, what level of discretion is used, and what moral values they have. Police supervision of street level activity is also problematic for managers because of its low prominence. Abuse of the powers of office rest in the notion of discretion and its control. Police officers of low moral fibre and strong authoritarian tendencies will target those they feel commit crime. This nature of policing rooted within the culture will breed discrimination, victimisation and harassment.

There is a low success rate for stops and search. Currently within the Metropolitan Police it stands at 12% (Fitzgerald 1999) however the national figure is much lower. On the one hand civil libertarian concerns focus on the high numbers of innocent people who were not arrested and who may be dissatisfied whilst on the other there is some evidence to suggest that not all arrests originating from stops and search are properly counted (See also Fletcher, 2000) which may in part account for the low measure of success. What lies at the heart of this matter is the strict control, management and supervision of discretion, recording and monitoring of stop and search where improvements may only come about with enhanced education and training at all levels of the police organisation.

Police managers determine the level of proof or blame in any disciplinary investigation. They also exercise their disciplinary function once they have consulted with the PCA. Once blame has been apportioned police officers feel that discipline is often exercised in an attempt to break up or diminish the police (canteen) culture. For outside agencies like the PCA or the DPP police

feel that they are often scapegoated to appease outsiders using the notion of public interest. The police service remains a blame culture by enforcing police discipline regulations which are seen more as punitive; a means of last resort rather than a means of enforcing good practice.

The issues of stop and search are clearly enjoined with public dissatisfaction and complaints. The Finsbury Park Survey established that stop and search is the litmus test of equality in policing and its frequency of use, when compared to the proportion of minorities in the population allows some means by which police managers may assess its impact. The pernicious effects of disproportionate use of stop and search together with a lack of confidence in the complaints system tends to put a 'stopper in the bottle' of fermenting public discontent. The police rely on inaccurate complaint statistics as a measure of performance, so by removing the barriers and obstacles to complaining may encourage more complaints, turning a negative input into a positive outcome. In this way they may win back some of the lost confidence and legitimacy in the police organisation. In sum, the ideal solution to policing by consent is as Lea and Young suggest;

'The accountable police force will be one that is trusted by the community, and, of course, this accountability must include a 'monitoring' element: an effective complaints procedure involving the public and the visitation of swift justice on officers who commit illegal acts. A force trusted by the community will be one which the community will be prepared to yield a high flow of information concerning crime' (Lea and Young. 1993, p260).

The law and the police complaints system provide the only formal methods of police accountability. This is a system which makes allowance for post action scrutiny allowing for errors to be corrected and lessons learned. It provides a system where informal controls can be regulated through policy originating at national level. The more informal the system the more flexible is its application. Imposing more formal controls over the police would be as problematic because it would significantly enhance political authority over the police, diminish managerial authority, and alter the balance of police independence and accountability. Balanced informal regulation both strengthens and enhances managerial power and provides for a better chance of success.

Formal methods of accountability fail to recognise the benefits and advantages of informal controls and restraints on police decision making at street level. These informal controls are discussed at length in the next chapter.



## CHAPTER SEVEN

### THE PATTERNING OF POLICE COMPLAINTS

#### INTRODUCTION

This chapter examines the notion of police accountability by analysing the frequency, structure and geographical nature of complaints statistics made against the Police of England and Wales. This original study focuses on available complaints data which has been drawn from all forty three Home Office Police Forces in England and Wales between 1992-1997.

When researching statistics of complaints the real and complete picture regarding the issue of police misconduct can easily elude us. No one official document gives an accurate and comprehensive representation because those who are charged with complaints overview, e.g. Chief Officers, Her Majesties Inspector of Constabulary (HMIC), the Home Office and the Police Complaints Authority (PCA) all measure differing features of the system for a wide variety of reasons. Why there is no comprehensive overview can be attributed to the fact that the gatekeepers of the complaints system are responsible at varying levels and in different ways. For example the HMIC reviews systems and processes in respect of all complaints made whereas the PCA consider the quality of complaint investigations and their outcomes, but only on matters passed to them by the police.

The Annual Reports compiled by the PCA are general documents which often confuse rather than enlighten. There is little guidance on definition concerning what constitutes a supervised, referred or non complaint matter. These are not straightforward issues and require careful explanation in layman's terms rather than the often legalistic style afforded to most publications of this sort. They do not refer to specific geographic areas but generalise on numbers relating to offences against the disciplinary code. They comment generally on usage of police equipment like firearms, incapacitant sprays and batons. Even then the geographic nature of such data eludes us. Much is kept secret and explanations would provide the reader with a more informed and circumspect view.

As a result of these difficulties, it was necessary to gather and analyse data from a variety of sources in order to study particular trends and patterns of complaints made against the police. Primarily those sources of data originate from Annual Reports submitted to the Home Secretary by each Chief Officer of Police, the PCA, the HMIC, in addition to various other documents like

the Home Office Statistical Bulletins. On analysis of the data, the observer can understand statistically the nature of accountability through the system of complaints.

There has been a very limited amount of research designed to determine the real extent of public discontent and complaint. Much of the available material originates centrally and the accuracy of this data is hampered by the hidden figure of public dissatisfaction and real level of complaint. The last really comprehensive police complaints publication was published by Corbett and Maguire for the Home Office in 1991 from research undertaken some four years previously.

Later in this chapter I will discuss the origin of the numerical information of complaints in terms of what is selected, recorded and reported. Statistical data is beset with limitations; for example the relationship between police and complainant affects the interpretation of any complaints statistics. The analysis and explanations from results that compare all the forces of England and Wales are shown according to area, population and behaviour.

#### UNDERSTANDING THE ORIGIN OF COMPLAINTS DATA.

Before analysis is possible, it is necessary to explain and define what is meant and understood by the following two terms i) all complaints, and ii) recorded PCA referred complaints. This will ensure against ambiguity.

##### i) All complaints.

The primary legislation governing all complaints against the police is the Police and Criminal Evidence Act 1984 (PACE). The Act requires that a complaint must be recorded by the force against whose officers it has been made before any investigation can begin. Complaints must be made by, or on behalf of a member of the public and must be about the conduct of a serving officer.

##### ii) Recorded complaints and PCA referred complaints.

More serious matters must be referred to the PCA under Sec87 of PACE which states that (a) the police force shall refer to the PCA:

- i) any complaint alleging that the conduct complained of resulted in the death or serious injury of some other person;

ii) any complaint of a description specified for the purposes of this section in regulations made by the Secretary of State;

(b) may refer to the Authority any complaint which is not required to be referred to them.

For this section serious injury means a fracture, damage to an internal organ, impairment of bodily function, a deep cut or a deep laceration. (Police and Criminal Evidence Act, 1984 s87(1)(a)(i) and (4) )

The PCA gather and disseminate details of all complaints which were recorded and investigated by the police in addition to those matters which were required for PCA supervision. Therefore, there is a distinction between all complaints and what have been suggested as *recorded PCA referred complaints*. The distinction is simple although the PCA reports do not make it clear.

#### ANALYSIS AND OBSERVATIONS: THE RESULTS.

If we consider the figures in Table 7.1 Merseyside had the highest level of complaints (1.38/1000) recorded against it, per member of the population; a figure which represented over double the average total with the mean of 0.65/1000. The Metropolitan Police (MPS) comes second with (1.14/1000).

In Table 7.2 those with the highest referrals of serious matters were the MPS (0.54/1000) and Merseyside (0.53/1000) with both recording nearly double the average figure (0.29/1000).

At the opposite end of the scale the lowest complaints rates for all complaints were Dorset (0.29/1000) and Lincolnshire (0.22/1000). For the more serious matters Lincolnshire (0.094/1000) was beaten into last place by Dyfed-Powys (0.06/1000). For Dyfed-Powys this represented a figure 5 times lower than the average and 10 times lower than the MPS at the top of the table.

In comparing the two sets of data what was worthy of note (Table 7.1) in respect of all complaints, apart from the two extremes, were the positions of some forces which appear out of place. For example Merseyside, MPS, Greater Manchester and South Wales occupy the first four positions, with the next spread of forces, being Gwent, Cleveland, Cumbria, North Wales and Nottinghamshire. Whilst it would not be surprising for urban areas to be

heavily represented in the top part of the table, the second tier represents the mainly rural locations which appear out of place and beg explanation. Additionally **Suffolk** showed up 6th in the table for recorded PCA referred complaints. However, if you compared them to **Norfolk** (a comparable rural force with nearly 100,000 higher population), (see Table 7.2) the latter appears in 17th place and is located well under the average figure. This appears to suggest that as a rural force **Suffolk** only records the more serious matters and fails to document the trivial complaints even though they may have been resolved to the satisfaction of the complainant. Only by considering local practice of reporting and recording this may well establish the answer to the question.

#### i) Complaints rates by percentage 1993-7

Table 7.3 showed the percentage of all complaints made and recorded together with the figures compared to all complaints.

The Force with the highest number of recorded PCA referred complaints compared to their total was **Suffolk** (74.2%), with a sum of at least a third more than the average (48.7%), followed by **Thames Valley** (73.4%), **Dorset** (68.5%) and **Cambridgeshire** (62.4%). What was again immediately evident was the presence of rural police forces in the top section with the larger more urban forces taking up more central positions within the statistics. **Nottinghamshire** represents 6th place (59.6%) the **MPS** in 14th (52.4%) position, whilst **West Midlands**, (47.9%) **Merseyside** (41.2%) and **Greater Manchester** (40.8%) take up 18th, 30th and 31st respectively. The last three showing averages of below the normal.

The forces with the least serious complaints ratios were **Gwent** (29.3%) **Cumbria** (28.1%) and **Dyfed-Powys** (16.6%) in 41st-43rd positions. **Dyfed-Powys** represented a figure 3 times lower than the average. These statistics suggest both a positive or negative outcome. Firstly there may be recording problem employed at the start of the process when people who wish to make a complaint are deflected from their purpose and matters are not recorded or reported. Secondly, the statistics may have reflected good management policy where speedy efficient action at the reporting stage resolved matters to the satisfaction of the complainant. Complaints should be reported even if they are marked up withdrawn, resolved or completed in order to provide management information. I have suggested that firstly, whilst there may be a reluctance on the part of the police to put pen to paper when they don't have to and secondly, that as a performance culture each deflected complaint is one less matter to appear in the statistics.

The next section considers the number of officers to population density. The figures were calculated to find complaints per officer rates.

**ii) Population to officer ratio.**

Each year Police Force strengths rise and fall according to budgets, re-organisations and demand. The control of police numbers rests entirely with the Chief Officer, with of course, the sanction of the Police Authority. Because these numbers fluctuate there may be a significant effect on complaints and quality of service. There is the assumption that more complaints are made due to the higher numbers of police per population and that this results in a higher proportion of complaints per officer. Some forces deliberately reduce numbers to free up finances which are used elsewhere.

In order to calculate the numbers of complaints compared to force strengths, calculations had to be made to establish the average number of officers for each force area over a 5 year span. This would establish policing density both demographically and geographically. The chart for police officer:population ratios (Table 8.4) show the MPS (1:271) to have the highest density policing, followed by Merseyside (1:297), City of London (1:316)<sup>1</sup> and Northumbria (1:333). The three force areas with the lowest density ratio were Norfolk (1:545), Suffolk (1:549) and Cambridgeshire (1:559).

These figures show that in urban areas the concentration of police to members of the public is double that of rural areas. Urban areas tend to have concentrations of population in a small locale whilst in rural settings these are dissipated over a wider area. Policing in urban areas appears to have the advantage of numbers and small travelling distances whilst rural areas are beset with fewer police and much larger travelling distances. Are the high police numbers in urban areas explained perhaps because of the higher incidence of public order situations in concentrated built up areas? Recently there has been widespread anxiety that some rural forces, particularly, are so over stretched that the fear of crime in the outlying farming communities is reaching fever pitch amid accusations of a lack of immediate police response and protection. Police numbers have a direct bearing on performance, outcome and effect. With this in mind force strengths are very significant, especially when analysing behaviour with comparative numbers, in this case police officer to population ratios.

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<sup>1</sup> The City of London calculates its average population according to transitory rather than residential parameters.

### **iii) Complaints per officer for all complaints and recorded PCA referred matters.**

The figures shown in Table 7.5 represent complaints per 10 police officers. For all complaints Merseyside have again shown the highest officer/complaint ratio (4.1) compared with Gwent (4.01), North Wales (3.56) and Greater Manchester (3.52). The forces with the lowest ratio were Durham (1.38), City of London (1.2) and Lincolnshire (1.13). The figures have showed two rural and two urban areas as attracting high levels of both trivial and serious complaints. Merseyside and Greater Manchester are the two urban forces whilst Gwent and North Wales are rural. In terms of complaints per officer this has certainly reflected a high incidence of public disapproval to police action and behaviour. It has suggested a no nonsense style of policing with perhaps lower tolerance or tact; a style which is often associated with an extreme form of police culture and certainly one which attracts further complaints.

For recorded PCA referred matters (the more serious cases), Cambridgeshire (1.84 x 10) was highest with Suffolk (1.83), Merseyside (1.58) and Cleveland (1.57) in 2nd, 3rd and 4th place, respectively. At the bottom of the scale were Lincolnshire (0.49), City of London (0.44) and Dyfed-Powys (0.28). Merseyside featured regularly and is over represented in most indexes. Again we see that even in the more serious matters they are over represented in third place behind two rural forces. Surprisingly Cambridgeshire and Suffolk, as two rural forces, attracted the highest number of complaints of a serious nature. What the figures do not tell us is whether the complaints originated from prisoners who were arrested so that it would be possible to establish what Mooney and Young suggests are Meta-crimes or those matters simply referred by them as crimes where the subjects “failed the attitude test”(2000, p83). The statistics only show us the results and not how the police operate. To do this would require a more local ethnographic approach which would highlight policing problems which may not have been known previously in, say, rural locations. For example one such consideration would be the recent ongoing animal rights activity in Cambridgeshire, where laboratories containing animals used for experimentation have been the subject of significant attention.

### **iv) Complaints ratios according to attitude and behaviour.**

The data contained within the PCA Annual Reports were adjusted to show individual figures per force in respect of heads of complaint or allegations according to the offences of the discipline code. This enabled a perspective on the issue of assault allegations made by a member of the public against the police. The effect of police behaviour and attitude on the public is an

important subject especially when such activity brings complaint prior, during and after an arrest, during a stop and search of a person or premises, and/or when returning to the station with the prisoner. Additionally this analysis also considered complaints about attitude made by complainants at other times.

Table 7.6 shows the levels of assault complaints according to force strength whilst Table 7.7 highlights “pre-charge room behaviour”. This enables a perspective of police behaviour to be viewed in respect of prisoners who had been arrested and perhaps cases where use of force has been necessary. Like the last section the object of this analysis was to establish geographic evidence for a style of policing that focused on confrontation, conflict and order maintenance. On the one hand it may have indicated an intolerance and excessive use of force on the part of some police forces or on the other a trend towards violence on the part of a suspect. The assumption here relates to the particular policing styles of some police units who employ a particularly aggressive style located within the militaristic bureaucratic model. Analysis in this way highlights particular hidden policing styles rooted within a dominant police sub-culture.

The analysis showed that **Greater Manchester (6.77)** was highest for “pre charge room behaviour” followed by **Sussex (5.88)** **Merseyside (4.55)** and **Thames Valley (3.88)**. At the other end of the scale **Durham (0.68)** was 41st, **Lincolnshire (0.65)** was 42nd and **Dyfed-Powys (0.37)** was last.

The following section critically reviews the data in terms of what was implicit in order to reveal gaps in information and knowledge which would be useful for both gatekeepers and observers of police conduct.

## CONSIDERATIONS

The study and evaluation of complaints data has revealed some limited if not interesting results, anomalies and irregularities. The analysis has helped to provide a benchmark with which to consider, analyse, and evaluate police behaviour. Additionally, it has provided a tool of analysis in the consideration of extremes and anomalous representations. The data has been interpreted, flagged up certain geographic areas of concern and emphasised others which require further research.

This research has distinguished between the two extremes of over and under representation and highlighted a number of police forces that attract

complaints suggesting an excessive use of police powers. These results have indicated a need for further research to establish the truth.

The research has shown that given the forty three police areas, variations exist in the monitoring, supervision and management of police complaints and discipline. It suggests in some cases a massaging of figures or managerial tampering which questions the very integrity of complaints data. This constrains the process by failing to unmask the true picture of dissatisfaction. Like crime data, police complaints are also beset with the hidden figure of dissatisfaction.

How can institutional abuse of procedures and processes in relation to data be detected or investigated. The answer is complex and not optimistic because it requires both insider knowledge and outsider authority to resolve. The resolution of this problem is twofold. Firstly, it is the Home Secretary's prerogative to enquire into such matters and he relies on the HMIC for this purpose. Getting to the truth is obstructed by the very inspection process itself and secondly by the legacy of the Inspectorate's origins. The HMIC possess insider knowledge because of their previous occupation, being drawn as they are from the most senior ranks of the police service, however their implied cultural loyalty often restrains them from severe over criticism of Chief Officers. The nature of inspections which are now thematic means that complaints are dealt with by subject and on an unspecified time cycle.

There is a strong indication that certain forces are suspected of misuse of procedures. Some of these may include Lincolnshire and Dyfed-Powys, who stand accused of under reporting and recording complaints; as both consistently appear to have very low figures for complaints compared to other forces. When the issue of under reporting, under recording and dissuasion are used against complainants the real figure of complaints must be considerably higher and consequentially enlarges the hidden figure. Like crime statistics the geographical distribution predominantly shows rural police forces tend to have the lowest recorded complaints per head of the population - which is certainly true of Dyfed-Powys and Lincolnshire - whilst the metropolitan areas and the conurbations possess the highest. Coleman and Moynihan suggest that in terms of reported crimes the findings are broadly in line with the positive relationship between urbanisation and recorded crime rates, although they caution that the fit is by no means perfect. The same must be said for complaints; for example Gwent police a small rural force with a strength of just over 1000, features 4th highest in Table 7.1 in respect of complaints against police per member of the population. What is clear in the foregoing discussion is the fact that difference, between areas may be due to variations in reporting and recording practices.



*The total of recorded complaints must be seen in the light of reporting practices and policy matters which determine what gets recorded. The real figure of dissatisfaction can not be gauged until the hidden figure of complaints is resolved.*

Extremes can be cause for concern, in that they highlight imbalances, deficiencies and problems. These concerns allow observers and researchers the ability to look beyond the numbers by questioning previously held assumptions, especially regarding what police officers do. This is exactly what the PCA do but on a more general level. Their concerns are never released publicly for fear of undermining the morale and motivation of the police. They are also conscious of the police lobby, which is a powerful body, and often their muted anxiety is expressed in private, away from public gaze, and hearing or promulgated through secret memoranda via the Home Office. On those rare occasions that the public become aware of concerns, these are expressed in a guarded and ambiguous manner in response to questions from central government sources. For example, the question of under representation in reporting of complaints has been a major concern of the PCA for some time - as their evidence before the Home Affairs Select Committee on 28th October 1997 suggested:

“Sometimes you need an investigation before you actually determine that it is more about policy than misconduct.” (Cartwright, p 59-60)

and

“It is fair to say that we are aware of the miscellaneous file which is where certain matters of complaint - if I can use that phrase to distinguish from recorded complaints - are placed. Where matters are filed under miscellaneous and sent out to division to try to sort out without a complaint being recorded, that would be an abuse of a procedure in the same sense that it reduces the number of recorded complaints” (Moorhouse, 1997, p59-60).

The problem here appears to be a difference in understanding in terms of reporting and recording procedures. There is a distinct difference between the two procedures because the former relates to the initial report which does not constitute a complaint until it has, in the latter case, been formally and officially recorded. The mere fact that a complaint against police has been reported is no guarantee that it will be recorded. It follows that un-recorded complaints will not be investigated nor appear in the statistics.

The research has outlined the structure, characteristics and nature of police complaints in England and Wales. It has developed some of the issues currently being focused upon within the police disciplinary processes. It

suggests the need for further research to be conducted in representations which identify causes and concerns and then recommends solutions.

#### CONCLUSION : WHAT THE COMPLAINTS DATA DID NOT SAY.

The statistics do not help us to consider the relationship between the disciplinary code offence and the situation leading up to the incident that provoked the complaint allegation. There was no information on the age, sex and race or social standing of complainant, nor the age, length of service, sex and race of the police officer(s) involved.

The data set provided no detail in respect of individual police misconduct but just presented basic facts, grounded along quasi-legal lines. There were no indications of attributes, psychological make up or personality traits that make up a profile relating to police deviant behaviour. The profiling of aberrant police officers according to age, background, education and experience may be of benefit to the Senior Officers who control the occupational procedures. Analysis of such data would certainly flag up, especially for middle and senior managers, potential problems that may assist recruitment, training and supervision.

It must be worth re-emphasising that the police discipline code was created, promulgated and implemented in 1920, and has remained as the cornerstone to police discipline save for small emendations, here and there, since that time. The processes that define deviant police behaviour are themselves the result of wider social processes, sometimes ancient, sometimes recent, which reflect religious, political and organisational considerations. It is against this backdrop that statistics of police deviance should be considered. For example - in April 1999 the discipline code was replaced with a code of ethics against which to measure police misconduct. This was introduced because of a growing political determination to make individual police officers more accountable to the public whilst at the same time increasing professional status. Therefore, changing and fine tuning procedures that attempt to control and restrain police behaviour must be seen in terms of a changing social process and political will; not just accepted as a "taken for granted".

This research has provided us with limited information about the characteristics of complaints and the likely organisational offences committed. It has shown assault complaints and pre-charge room behaviour to be problematic, more particularly in some areas than others and these areas have been identified. This showed that a problem existed but only in a limited way on those matters which were reported and recorded by the police. Further investigation at local level is required to highlight problems relating to

reporting and recording practices. Lastly, the true levels of public dissatisfaction and the hidden figure of complaints can only be obtained by approaching the problem in a different direction by utilising victim surveys. I will turn to this in the next chapter.

**Table 7.1 Complaints against the Police over 5 Years  
by Population and Force Area**

Nationally recorded Complaints including those referred to the PCA.

force	pop	1994	1994/5	1995/6	1996/7	total	complaints/1000	
Merseyside	1427195	1817	2146	1882	2028	1968	1.38	1st
Metropolitan Police	7495527	4861	10094	10215	9122	857	1.14	2nd
Greater Manchester	2578300	2581	2701	2494	2149	2481	0.96	3rd
South Wales	1227700	845	981	1071	965	966	0.79	4th
Gwent	556300	401	467	412	427	427	0.77	5th
Cleveland	559200	538	460	331	375	426	0.76	6th
Cumbria	490300	331	319	400	419	367	0.75	7th
North Wales	658700	461	608	486	392	487	0.74	8th
Nottinghamshire	1035500	675	788	757	754	744	0.72	9th
West Midlands	2637200	1659	1739	1768	1681	1712	0.65	10th
Avon and Somerset	1463000	881	992	920	976	942	0.64	11th
Sussex	1432400	706	905	1044	864	880	0.61	12th
Gloucestershire	555800	371	300	335	323	332	0.06	13th
Cambridgeshire	697300	305	422	480	458	416	0.60	14th
Surrey	775226	406	506	389	497	450	0.58	15th
Humberside	889200	654	472	498	431	514	0.58	16th
West Yorkshire	2105800	1271	1304	1043	966	1146	0.54	17th
Norfolk	775400	386	393	425	423	407	0.53	18th
Staffordshire	1056400	545	548	523	587	551	0.52	19th
Lancashire	1426000	638	695	722	886	735	0.52	20th
Devon and Cornwall	1549500	764	935	695	760	789	0.51	21st
Suffolk	656809	350	353	343	287	333	0.51	22nd
Kent	1555640	827	766	802	657	763	0.49	23rd
North Yorkshire	726900	347	330	371	370	355	0.49	24th
Hampshire	1741331	854	685	700	948	797	0.46	25th
West Mercia	1114200	457	506	565	506	509	0.46	26th
Derbyshire	962300	402	481	441	384	427	0.44	27th
Northumbria	1438300	650	612	639	650	638	0.44	27th
Hertfordshire	846100	418	407	336	312	368	0.44	29th
Cheshire	975000	507	454	513	489	491	0.43	30th
Bedfordshire	545660	254	249	217	217	234	0.43	31st
South Yorkshire	1303828	652	583	449	473	539	0.41	32nd
Wiltshire	595250	277	260	272	162	243	0.41	33rd
Thames Valley	2039177	882	979	706	742	872	0.41	34th
Essex	1505725	410	500	587	573	518	0.38	35th
City of London	264000	64	89	112	133	100	0.38	36th
Northamptonshire	559300	199	178	177	294	212	0.38	36th
Dyfed-Powys	474700	142	169	167	202	170	0.36	38th
Leicestershire	923000	375	305	289	292	315	0.34	39th
Warwickshire	498700	163	136	206	165	168	0.34	40th
Durham	607700	204	214	189	166	193	0.32	41st
Dorset	678700	179	147	268	185	195	0.29	42nd
Lincolnshire	616100	83	93	189	169	134	0.22	43rd
<b>totals</b>	52020368	29782	36208	35428	33859	33817	0.65	

**Table 7.2 Complaints against Police by Force area and Population**

PCA referred Complaints - per member of the public (the more serious matters)

Force	1992	1993	1994	1995/6	1996/7	total	average	Complaints/1000	rank
Metropolitan Police	2436	2277	5123	5338	5243	20417	4083	0.545	1st
Merseyside	541	508	985	790	966	3790	758	0.531	2nd
Cleveland	161	178	441	233	141	1154	231	0.413	3rd
Nottinghamshire	167	211	481	508	573	1940	388	0.375	4th
Greater Manchester	508	580	1133	1161	1177	4559	912	0.354	5th
Suffolk	104	139	364	251	236	1094	219	0.333	6th
South Wales	64	109	463	582	795	2013	403	0.328	7th
Gloucestershire	133	147	210	216	206	912	182	0.327	8th
West Yorkshire	589	511	648	719	920	3387	677	0.321	9th
North Wales	120	137	289	233	211	990	198	0.301	10th
Sussex	171	174	498	565	707	2115	423	0.295	11th
Surrey	119	120	303	287	303	1132	226	0.292	12th
West Midlands	440	400	929	1079	875	3723	745	0.282	13th
Lancashire	170	265	429	534	511	1909	382	0.268	14th
Avon and Somerset	280	326	467	415	472	1960	392	0.268	14th
Thames Valley	273	272	920	2625	613	2703	541	0.265	16th
Norfolk	176	149	221	183	252	981	196	0.253	17th
Humberside	224	202	251	210	228	1114	223	0.251	18th
Devon and Cornwall	191	194	496	385	576	1842	368	0.237	19th
Cambridgeshire	109	87	289	283	380	1148	230	0.230	20th
Gwent	79	61	175	134	131	580	116	0.209	21st
Kent	202	220	479	308	373	1582	316	0.203	22nd
Wiltshire	70	88	188	147	99	592	118	0.198	23rd
Dorset	113	67	120	164	183	647	129	0.190	24th
Cumbria	54	94	92	136	92	468	94	0.192	25th
Derbyshire	109	140	205	255	182	891	178	0.185	27th
Leicestershire	126	153	185	178	205	847	169	0.183	28th
Cheshire	81	63	192	201	304	841	168	0.172	29th
Staffordshire	89	149	213	201	237	889	178	0.168	30th
Northamptonshire	67	72	84	113	128	464	93	0.166	31st
Northumbria	238	228	271	222	236	1195	239	0.166	31st
Hampshire	175	247	280	303	410	1415	283	0.163	33rd
Hertfordshire	67	89	158	142	153	609	122	0.144	35th
Essex	75	83	232	311	367	1068	214	0.141	36th
South Yorkshire	147	202	227	192	141	909	182	0.140	37th
City of London	16	20	40	28	79	183	37	0.140	37th
Durham	53	66	89	76	113	397	80	0.137	39th
North Yorkshire	59	43	102	152	126	482	96	0.132	40th
Warwickshire	34	44	58	66	99	301	60	0.120	41st
Lincolnshire	36	45	60	53	94	288	58	0.094	42nd
Dyfed-Powys	20	17	22	31	43	133	27	0.057	43rd
<b>totals</b>	<b>9045</b>	<b>9193</b>	<b>18780</b>	<b>18343</b>	<b>19606</b>	<b>74967</b>	<b>14993</b>	<b>0.288</b>	

**Table 7.3" Complaints referred to the PCA  
as a percentage of all complaints made-1993-97 By Force Area**

Force	population	all complts	PCA refered	%	rank
Suffolk	656809	1333	990	74.27	1st
Thames Valley	2039177	3309	2430	73.44	2nd
Dorset	678700	779	534	68.55	3rd
Cambridgeshire	697300	1665	1039	62.4	4th
West Yorkshire	2105800	4584	2798	61.04	5th
Nottinghamshire	1035500	2974	1773	59.62	6th
Lancashire	1426000	2941	1739	59.13	7th
Gloucestershire	555800	1329	779	58.62	8th
Cleveland	559200	1704	993	58.27	9th
Leicestershire	923000	1261	721	57.18	10th
Surrey	775226	1798	1013	56.34	11th
Sussex	1432400	3519	1944	55.24	12th
Wiltshire	595250	971	522	53.76	13th
Metropolitan Police	7495527	34292	17981	52.43	14th
Devon and Cornwall	1549500	3154	1651	52.35	15th
South Wales	1227700	3862	1949	50.47	16th
Norfolk	775400	1627	805	49.48	17th
West Midlands	2637200	6847	3283	47.95	18th
Essex	1505725	2070	993	47.97	19th
Lincolnshire	616100	534	252	47.19	20th
Northamptonshire	559300	848	397	46.82	21st
West Mercia	1114200	2034	947	46.56	22nd
Derbyshire	962300	1708	782	45.78	23rd
Kent	1555640	3052	1380	45.22	24th
North Wales	658700	1947	870	44.68	25th
Avon and Somerset	1463000	3769	1680	44.57	26th
Durham	607700	773	344	44.5	27th
Humberside	889200	2055	890	43.31	28th
City of London	264000	398	167	41.96	29th
Merseyside	1427195	7873	3249	41.27	30th
Greater Manchester	2578300	9925	4051	40.82	31st
Warwickshire	498700	670	267	39.85	32nd
Hampshire	1741331	3187	1240	38.91	33rd
Cheshire	975000	1963	760	38.72	34th
Northumbria	1438300	2551	957	37.51	35th
Hertfordshire	846100	1473	542	36.8	36th
Staffordshire	1056400	2203	800	36.31	37th
Bedfordshire	545660	937	335	35.75	38th
South Yorkshire	1303828	2157	762	35.33	39th
North Yorkshire	726900	1418	423	29.83	40th
Gwent	556300	1707	501	29.35	41st
Cumbria	490300	1469	414	28.18	42nd
Dyfed-Powys	474700	680	113	16.62	43rd

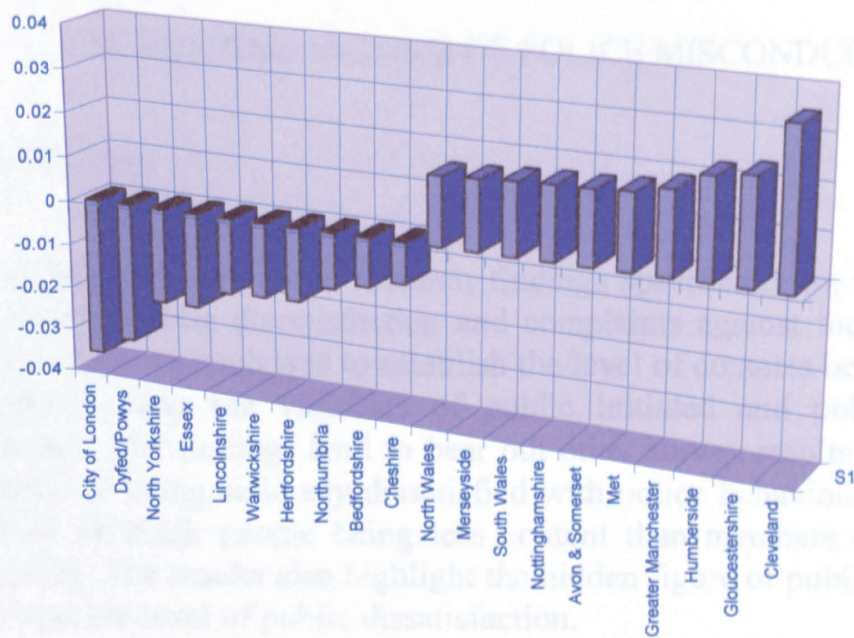


**Table 7.5. Rates of complaint per officer for all and PCA recorded matters**

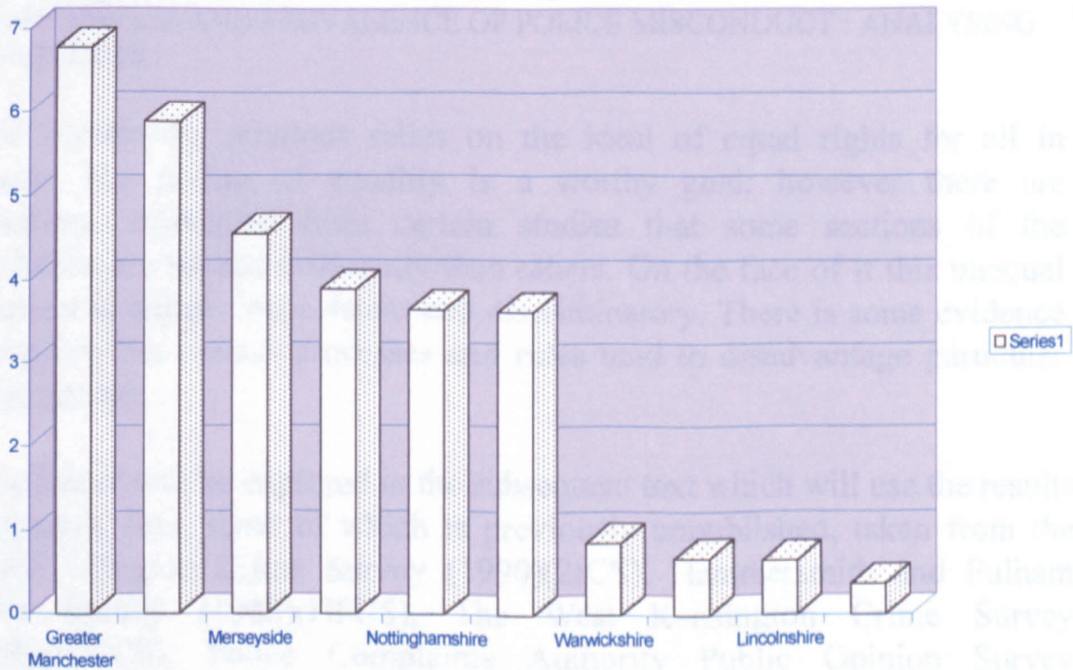
	strength	1994	1994/5	1995/6	1996/7	total	average	ratio	rank
<b>Avon and Somerset</b>	3041	881	992	920	976	3769	942	3.1	9th
Bedfordshire	1143	254	249	217	217	937	234	2.05	
<b>Cambridgeshire</b>	1247	305	422	480	458	1665	416	3.34	5th
Cheshire	1951	507	454	513	489	1963	491	2.52	
City of London	834	64	89	112	133	398	100	1.2	
Cleveland	1469	538	460	331	375	1704	426	2.9	
<b>Cumbria</b>	1161	331	319	400	419	1469	367	3.16	7th
Derbyshire	1805	402	481	441	384	1708	427	2.37	
Devon and Cornwall	2701	764	935	695	760	3154	789	2.92	
Dorset	1284	179	147	268	185	779	195	1.52	
Durham	1395	204	214	189	166	773	193	1.38	
Dyfed-Powys	979	142	169	167	202	680	170	1.74	
Essex	2931	410	500	587	573	2070	518	1.77	
Gloucestershire	1162	371	300	335	323	1329	332	2.86	
<b>Greater Manchester</b>	7043	2581	2701	2494	2149	9925	2481	3.52	4th
<b>Gwent</b>	1064	401	467	412	427	1707	427	4.01	2nd
Hampshire	3301	854	685	700	948	3187	797	2.41	
Hertfordshire	1702	418	407	336	312	1473	368	2.16	
Humberside	2033	654	472	498	431	2055	514	2.53	
Kent	3153	827	766	802	657	3052	763	2.42	
Lancashire	3214	638	695	722	886	2941	735	2.29	
Leicestershire	1878	375	305	289	292	1261	315	1.68	
Lincolnshire	1183	83	93	189	169	534	134	1.13	
<b>Merseyside</b>	4804	1817	2146	1882	2028	7873	1968	4.1	1st
<b>Metropolitan Police</b>	27570	4861	10094	10215	9122	34292	8573	3.11	8th
Norfolk	1420	386	393	425	423	1627	407	2.87	
Northamptonshire	1181	199	178	177	294	848	212	1.8	
Northumbria	4307	650	612	639	650	2551	638	1.48	
<b>North Wales</b>	1367	461	608	486	392	1947	487	3.56	3rd
North Yorkshire	1370	347	330	371	370	1418	355	2.59	
<b>Nottinghamshire</b>	2335	675	788	757	754	2974	744	3.19	6th
<b>South Wales</b>	3163	845	981	1071	965	3862	966	3.05	10th
South Yorkshire	3057	652	583	449	473	2157	539	1.76	
Staffordshire	2210	545	548	523	587	2203	551	2.49	
Suffolk	1195	350	353	343	287	1333	333	2.79	
Surrey	1661	406	506	389	497	1798	450	2.71	
Sussex	3036	706	905	1044	864	3519	880	2.9	
Thames Valley	3766	882	979	706	742	3309	872	2.32	
Warwickshire	992	163	136	206	165	670	168	1.69	
West Mercia	2034	457	506	565	506	2034	509	2.5	
West Midlands	7062	1659	1739	1768	1681	6847	1712	2.42	
West Yorkshire	5616	1271	1304	1043	966	4584	1146	2.04	
Wiltshire	1191	277	260	272	162	971	243	2.04	
<b>totals</b>		29782	36208	35428	33859	135270	33817		



**Chart 7.6 Complaints of assaults by Force Area and Strength 1993-1997**



**Table 7.7 Data showing allegations of oppressive police conduct complaints according to Force strengths**



## CHAPTER EIGHT

### SURVEYING VICTIMS OF POLICE MISCONDUCT

#### INTRODUCTION

In this chapter I review the research findings specifically on the issues of stops/search, public dissatisfaction and complaints against the police. The purpose of the research was to establish the level of contacts between police and public using the variables of public initiated and police initiated approaches. The findings tend to bear out other survey results that showed the public as being seriously dissatisfied with police behaviour, with up to one third of black people being less content than members of the white community. The results also highlight the hidden figure of public complaint; the unreported level of public dissatisfaction.

Good practice dictates that as much use as possible should be made of the various data sources.

#### THE INCIDENCE AND PREVALENCE OF POLICE MISCONDUCT : ANALYSING THE RESULTS.

Good community relations relies on the ideal of equal rights for all in society. The notion of equality is a worthy goal; however there are indications evidenced from certain studies that some sections of the population are treated differently than others. On the face of it this unequal treatment is unjust, inconsistent and discriminatory. There is some evidence to suggest that certain processes and rules tend to disadvantage particular ethnic groups.

These issues will be explored in the subsequent text which will use the results of research data, some of which is previously unpublished, taken from the Second Islington Crime Survey (1990)(2ICS), Hammersmith and Fulham Crime Survey (1988)(HFCS), The West Kensington Crime Survey (1989)(WKCS), Police Complaints Authority Public Opinion Survey (1996)(PCAOS), Police Complaints Authority data, the Finsbury Park Survey (1994)(FPCS). Primarily the FPCS which is the most recent victim survey, will be considered in greater depth.

The Police Service has been widely criticised for being unaccountable - especially towards the community which they are expected to serve. The two strands which contribute towards this debate within criminology focus firstly on the level of accountability on the part of a police officer to an individual member of the public. Secondly there is the argument that the formal procedures of collective accountability are not best served unless there is a change in the balance of power in respect of the political process.

It is not the purpose of this section to argue for a change in power relations within the tri-partite structure that currently exists but to focus on the results of the available data and to interpret the meaning of these results. This will consider the issues of victimisation and impact on both individual and community.

**Table 8.1 - Police / Public contacts per 100 population in 12 months, Black compared to White.: Finsbury Park Crime Survey**

<b>Public Initiated contacts</b>	<b>black</b>	<b>white</b>
<b>Personal call at a police station</b>	9.9	23.8
<b>Approach police in a public place</b>	11.8	17.6
<b>Report incident to police</b>	1.2	4.4
<b>999 calls made by yourself</b>	9.9	17.8
<b>Police Initiated contacts</b>	<b>black</b>	<b>white</b>
<b>Police called to your home</b>	22.1	11.8
<b>Home searched (in last two years of survey)</b>	0.8	0.6
<b>Number of times stopped in street</b>	8.1	7.3
<b>Stopped in car you were in</b>	11.6	15.4
<b>Taken or detained by police</b>	2.1	1.6
<b>Searched car you were in</b>	3.5	1.3
<b>Stopped and searched in street</b>	4.3	2.3

### Contacts with police

What is evident from the research in respect of public orientated contacts is that black respondents were 50% less likely to contact the police of their own accord about an issue or incident than white respondents. Put another way white people appear to make twice as many contacts with police as members of the black community.

In respect of police orientated contacts, black people were more likely to be stopped in the street were three times more likely to be searched, and if stopped in a car were three times more likely to be searched than white people. Both blacks and whites were equally likely to be contacted by police with overall figures especially weighted to house calls for arrests.

### Complaints against Police

The results of both applicable surveys are shown below in Table 8.2 together with the questions which were asked.

Table 8.2 - Percentage comparisons regarding complaints against police: Second Islington Crime Survey (1990) and the Finsbury Park Crime Survey (1994).

<b>Questions</b>	<b>2ICS</b>	<b>FPCS</b>
public seriously dissatisfied with police.	29	30
happened in last 3 years?	55	54
If so, was complaint made?	16	16
If complaint not made- reason?		
would have no effect	70	68
police investigate police	8	8
dont like to complain	6	7
dont know how to complain	2	2
afraid of reprisals	9	9
dont know	6	11
Knowledge of new complaints system-april 1985	27	28
self, family or acquaintance who has made complaint	7	7
If complaint made have the 1985 changes,		
-improved procedures?	9	9
-left them much the same?	38	38
-made things worse?	3	2
-dont know?	5	5

Because the questions asked in both the Second Islington and Finsbury Park surveys were identical it became possible to contrast the results. The same was also true for the Hammersmith and Fulham and West Kensington Estate Surveys which are shown in Table 8.4. Both sets of data are shown so that comparisons can be made later with the PCA's own survey results.

The results of the two sets of data show that, even over time, the response to the same questions remains remarkably consistent. The data from both the 2nd Islington and Finsbury Park Surveys are similar even though the data was compiled some 4 years apart.

**Table 8.3 - Complaints against police- percentage breakdown by ethnicity, Finsbury Park Crime Survey (1994)**

<i>Questions</i>	<i>All</i>	<i>white</i>	<i>black</i>
% of public seriously dissatisfied with police.	30	29	39
happened in last 3 years?	54	52	69
If so, was complaint made?	16	14	27
If complaint not made- reason?			
would have no effect	68	68	65
police investigate police	8	8	1
dont like to complain	7	7	4
dont know how to complain	2	2	4
afraid of reprisals	9	8	13
dont know	11	7	4
Knowledge of new complaints system-april 1985			
self, family or acquaintance who has made compl.	7	6	13.5
If complaint made have these changes,			
improved procedures	9	8	1
left them much the same	38	38	53
made things worse	2	2	5
dont know	50	52	35

As can be seen from the results in Table 8.3, roughly 30% of respondents (29% white and 39% black) have been seriously dissatisfied with police behaviour, with just over half of these incidents occurring within the last 3 years. This means that 54% of people within this group made a complaint compared to 46% who did not. The hidden figure of complaints against

police therefore stands at 46% or just under half. Much of the dissatisfaction occurred recently with the 54% (52% white and 69% black) happening within the last 3 years. Black people tend to have higher levels of disaffection than the white population. Only 16% chose to complain about police behaviour. Some two thirds or 68% (68% white 65% black) of those who were dissatisfied decided not to make a complaint on the grounds that it would have no effect.

Eight percent would not complain because the police investigate themselves and these results reflect a lack of confidence in this procedure. Some 9% (8% white and 13% black) were afraid of either reprisals or complaining as their reason for non-complaint. Ethnic dissatisfaction was too small to count in respect of the other variables. About 28% (28% white and 26% black) were aware of the new complaints procedure implemented since April 1985. Equally 72% of respondents (65% white and 76.5% black) were unaware of the new system of complaints. A total 7% respondents (6% white and 13.5% black) had either used the new system themselves or had a family member or acquaintance who had done so. Some 9% felt that the procedures had improved the system of complaints but 38% (38% white and 53% black) felt it was much the same with roughly 2% (2% white and 0.5% black) stating it was worse. About half of the respondents (52% white and 35% black) did not know if matters had been improved or got worse. Again there appears to be a consistent theme of black over representation in dissatisfaction levels with police.

**Table 8.4 - Complaints against the police : Hammersmith and Fulham Crime Survey, West Kensington Crime Survey and Police Complaints Authority sponsored surveys, Percentages.**

Questions	H'smith	West Ken	PCA-general	PCA-ethnic
whether dissatisfied would they complain				
yes	79	79		
would not	14	15		
didnt know	7	6		
What body- report your complaint to?				
Scotland Yard	15	22	18	12
Senior officer at local police station	75	74	37	34
The Police Complaints Authority	48	47	12	4
Local Councilor	24	26		
Member of Parliament	3	32	12	5
Home Secretary	9	13		
Lawyer	29	32	11	13

The above table shows a comparison of 4 sets of data. Two sets have been drawn from surveys relating to victim surveys done locally in Hammersmith and Fulham (1988), and West Kensington Estate Survey (1989). The remaining two sets of data were commissioned privately by the PCA in 1996 as part of a general attitude survey with a booster sample of the same questions but drawn from ethnic minorities. This was a national opinion survey.

When the Hammersmith and Fulham and West Kensington Surveys were compared, the results showed that 79% would complain in the event that there was any police behaviour which dissatisfied them. This represents certainly as far as intention is concerned, a significant vote of confidence in the police complaints procedures. Roughly 15% claimed they would not complain while about 7% did not know. When asked what body they would report any complaint to, on average 17% replied they would report their grievance to Scotland Yard while roughly 75% would complain to a Senior Officer at the local police station. Forty eight percent of respondents considered complaining directly to the PCA representing a figure amounting to the second largest. Potential complainants responded by wishing to report their complaint to either the Local Councillor with 10%, Member of Parliament with 13%, the Home Secretary with 5% and finally a lawyer with 13%. What is evident when considering the results of Table 8.4 are the consistent results across all the surveys.

The PCA sponsored survey of 2,000 adults, showed that 40% of men and 35% of women and 35% of men and 33% of women drawn from ethnic minorities would complain at a local police station. Some 12% of respondents would complain to the PCA with 4% in the case of ethnic minorities. There was a high figure of 22% of the main survey and 36% from ethnic minorities who did not know where they would complain - representing the second highest response. Some 8% of the main survey and 8% of the ethnic sample would write to police, 18% (12% of ethnic minorities) would contact a Chief Constable, 12% (5% in the case of ethnic minorities) would contact a Member of Parliament with 11% (13% in the case of ethnic minorities) who would contact a solicitor. <sup>1</sup>

This appears to reflect sufficient confidence by all respondents in the system of complaints against police; to complain at a police station, should there be a

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<sup>1</sup> The main PCA sponsored survey reflected the responses from 2000 people. However the booster survey were drawn from a sample number of 430 people drawn from ethnic minorities.

need to. This confidence is not reflected when actual behaviour is compared to intention, shown against results taken from the Finsbury Park Crime Survey in Tables 8.2 and the 8.4. In Table 8.4 four fifths of all people surveyed would make a complaint if seriously dissatisfied, yet in Table 8.2 this intention does not convert into making a complaint because over two thirds asserted that complaining would have no effect. So whilst some respondents were well intentioned and confident in the process, public indifference and apathy signals an under-use of the complaints process. Additionally, a high proportion of people, particularly from ethnic minorities, were unaware of what their response would be in such a situation. Another point of concern is the fact that redress to complaints can be taken in another form, for example a civil action. However, on the basis of these figures people from ethnic minorities were more prone to contact a solicitor than were white respondents.

## DISCUSSION

In this chapter I have sought through the victim survey to establish the hidden figure of complaints against the police and confirm or deny the extent of black over-representation within the statistics. Additionally, results were analysed to show the prevalence of dissatisfaction according to both black and white respondents. I considered the various types of interaction that precipitated contact with police and the likely situations that caused dissatisfaction that may have caused a complaint to be made. At present only individual (not corporate) behaviour can become the subject of a complaint. This translates that only some form of contact between the two parties determines a complaint. It was essential to categorise the type of contact in order for it to be measured according to the variable.

The research established that there were eleven distinct types of contact and that they could be sub-divided into two distinct categories: Public initiated contacts and police initiated contacts. Analysis showed a great reluctance or apathy on the part of black people to contact police of their own accord. There was a slightly higher incidence on the part of black people to being stopped by police, but that once stopped they stood three times greater chance of being searched compared to white people. If travelling in a car one third more white people were stopped, but if black and travelling in a vehicle the incidence of being searched stood at three times that of white people.

On the face of it and using national statistics, there appears to be a black over-representation. Nationally, the black and Asian group represent 6% of the population. Within the PCA complaints data they represent on average



17% of all complaints dealt with by them. From this perspective these figures show an over-representation of nearly three times the national average in respect of recorded complaints.<sup>2</sup>

The analysis also considered a number of independent surveys that reviewed complaints against police and public dissatisfaction against which it was able to compare. It showed an intention to complain in the event that police behaviour fell below the required standard; however the results showed otherwise because the intention to complain was not matched with action. The lack of willingness and apathy appears to have resulted in few complaints.

Dissatisfaction levels with police behaviour appear to be increasing with nearly one third white people and two fifths of black people being seriously dissatisfied with police. Proportionally a third more black people were more dissatisfied with police behaviour than people from the white community. Some two thirds of black people and half of white people stated that the cause of their dissatisfaction had taken place over the last three years. Only a small number of people made a complaint with 16% of complaints being made over three years for both ethnic groups. This means that just under half of people who could have made a complaint against police did do so.

This indicates a lack of confidence in the current process of complaints where fewer than 6% of people a year make a complaint. This has stressed the high levels of hidden public dissatisfaction of police deviance.

A high proportion of both blacks and whites, some two thirds in both cases indicated that making a complaint would have no effect. Black people were less confident in the complaints process with just over half of them stating that the new complaints system had altered nothing.

It seems that improved procedures within the complaints process since its introduction in April 1985 were only known to a very small section of the public with 50% having no knowledge of them whatsoever. Twice as many black people had either used or had a friend or acquaintance who had used the new complaints process than white people. Only 10% of black people indicated that it had improved and therefore had confidence in the new system. The analysis has continued to show that black people were in fact

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<sup>2</sup> It is accepted that there are significant weaknesses in presenting national statistics in this way as it fails to accept both geographic and demographic patterning although there are other defects.

significantly over represented, recording a high level of public dissatisfaction with police generally. The hidden figure of police complaint stands at 46% or just under half of all complaints made. This means that under reporting, under recording and lack of confidence in the complaints system causes just under half of dissatisfied members of the public not to make an official complaint. If the police were aware of such high levels of public disapproval they would need, not only to double their efforts to ensure these matters became public knowledge, but they would also need to double the amount of resources applied to dealing with and investigating police complaints. Earlier in the thesis the PCA suggested that the high incidence of black complaints reflected a confidence in the complaints process, however this is not the case as the research indicates that black people do tend to use the complaints process more than white people, although they do not appear to be at all confident in the system.

## Summary of findings from the Finsbury Park Survey data

### Contacts with the public

- 1) Black people were 50% less likely to voluntarily contact police of their own accord than white people.
- 2) Black people were slightly more likely to be stopped in the street than white people.
- 3) Black people were 3 times more likely than white people to be searched.
- 4) If in a car black people were 3 times more likely to be searched.
- 5) If in a car one third more white people were stopped than black.

### Complaints against police

- 1) Generally, dissatisfaction levels with police behaviour are increasing- Nearly one third of white people and two fifths of black people were seriously dissatisfied with police behaviour.
- 2) Black people were one third more likely than white people to be dissatisfied with police.
- 3) Dissatisfaction levels rise when the last 3 years are used with half of white people and two thirds of black people expressing their dissatisfaction.
- 4) Whilst high levels of dissatisfaction are recorded this is not being translated into complaints with 16% (56%) of complaints being made over a three year period for both black and white people.
- 5) Proportionally, dissatisfied black people are twice as likely to make a complaint than white people.
- 6) The hidden figure of complaints stands at 46%. A very high proportion of people from both ethnic groups declined to complain because it would have no effect.

- 7) White people were slightly more aware of the new complaints system than black people.
- 8) Twice as many black people had used or have a friend or acquaintance who had used the complaints process.
- 9) Those who had used the complaints process, some half of black people stressed that these changes had left matters very much the same.
- 10) Black people appear to have little confidence in the complaints process with a small proportion (10%) saying it had improved.
- 11) Half of whites and one third of blacks appeared indifferent to any change the new system had made.

## CHAPTER NINE

### THE IDEAL COMPLAINTS SYSTEM

#### SUMMARY AND CONCLUSIONS

The issue of police misconduct has been reviewed within this research and found to be a major problem. The impact of misconduct on the public and more specifically on minority ethnic groups has been understated with higher levels of malpractice than statistical information has previously identified. The lessons from the research tends to show a rift in terms of attitude and perception between police and public.

In the introduction I considered a number of questions regarding public confidence in the complaints process. The research has established that the fundamental principle of the system of complaints that copes effectively with police misconduct is breaking down. The system fails to satisfy the complainant with the exception of informal resolution and has failed to win the support and confidence of the public as a whole.

#### Public contact with police

The research has also established that, in terms of ethnicity standards of police behaviour are dependent upon who they interact with. This happens regularly and the consequences which are related are twofold; firstly, a deterioration in community relations occurs between police and the public leading secondly, to a crisis of public confidence and trust in the police.

There is a fundamental reluctance on the part of black people to interact with the police. This means that black unwillingness includes reporting a crime, misdemeanour or incident personally on the telephone or in writing to police. This results in a variation of relationships between both white and black people with police. The consequences of this result are duplicated. Firstly this unwillingness means an under reporting of crimes - particularly crimes against the black community - that include matters of race hatred, harassment and victimisation. Secondly there is a reluctance to report police malpractice that consequently results in an under-reporting of complaints of police misconduct, racism, harassment and victimisation.

There are high levels of police initiated contacts with the black community as the results of the research bear out. As far as race is concerned police malpractice is not spread equally over the population because such misconduct is disproportionately distributed - notably towards blacks rather than whites. This research tends to confirm findings from the First Islington Crime Survey that;

“Important here is the fact that beliefs in the police using excessive force rises with contacts and the extent of criminal victimisation” (Jones et al 1986, p136)

Feelings of enhanced negativity towards the police appears dependent on police/public contact and victimisation. Roughly translated this means that repeated negative contacts with police against a particular group leads to further negativisation; resulting in a spiral of declining relations between police and members of the black community. The extreme of this decline in relations tends to result in confrontation, a withdrawal of legitimation in policing, violence and riot.

### **Public complaints**

Very high numbers of people - some two thirds - do not use the complaints system. The hidden figure of police complaints is 46%. This shows a masking of police malpractice with just under 50% being unknown. The secrecy, complexity and over bureaucratic nature of the complaints process also hides police misconduct especially against the vulnerable, the black and the poor.

In essence these figures mean that roughly a half of complainants fail to express their dissatisfaction officially; this assumes the ratio of one complaint to one complainant and fails to take into account the fact that complainants may have more than one complaint to make for each claim of dissatisfaction. It also fails to account for repeat victimisation as this occurs more often against those who are targeted. The police are only aware of just over half of all complaints therefore methods to prevent police misconduct must also be failing. Not only must the police double the effort in terms of complaints management. They must also allocate double the resources to cope with the problem. In times of limited budgets it may not be possible for police to allocate such resources to the problem.

There needs to be a fundamental change in ethos to complaints management, investigation and resolution. This variation should demonstrate a change of

emphasis that takes public complaints more seriously and makes the system 'not colour blind but colour conscious'. This reflects a system which strives towards multiculturalism - not assimilation - and includes rather than excludes. Policy should be introduced which reflects this change of prominence, designed to incorporate all sections of the community, no matter what age, gender, race or class.

The removal of any discretion from the police with regard to the reporting, recording and investigating of complaints is an essential first step. The next step is the handling of these matters by a independent and separately funded non police organisation, emphasised in this chapter.

### **The contribution towards knowledge.**

No other review of the police complaints system has been able to research this topic in the same way as demonstrated within this thesis. The use of the victim survey data and the application of a creative style of analysis has made a significant contribution towards established knowledge on this subject.

A review of the statistics in the early stages of this research highlighted Force levels of complaint in a number of ways that pointed to both over and under representation in terms of errant behaviour. Notwithstanding the limitations of this research design, this directed attention to the identification of complaint mis-reporting, under recording and under reporting. This design allowed forces to be identified which show reporting problems and a heavy handed style of militaristic policing. These indications were all that could be ascertained under the circumstances without further, more in-depth, insider research. Using this method I was unable to answer the original question regarding the hidden figure of complaints; therefore I needed to review the strategy and change course to achieve the goal. The contribution provided by this research is also policy relevant; with the Home Office expressing an interest in the research findings.

This research has built upon the established work, particularly of Russell (1976) and Corbett and Maguire (1991), both of which offer original insights into the closed world of police misconduct. The research has brought up to date the issue of complaints handling by the police using outside survey data without having to rely on official statistics, with all their limitations. Both the previous research projects experienced difficulties in terms of access, relevance and ethics on such a sensitive topic. Using both research styles

allowed a variation of perspective which showed up problems and imperfections of the system.

The victim survey data helped me to provide a better, more comprehensive picture regarding the nature of the problem of policing and public satisfaction with police services. It was also able to indicate levels of public support of police, knowledge of and levels of usage of the existing system, especially with respect to ethnicity. The research also helped to establish an accurate picture of black over representation within the complaints statistics; both in terms of under-reporting and over-use. This showed paradoxically that proportionally more black complainants used the system than did whites, but also that confidence in the system by both groups was extremely low. It told us also that proportionally larger numbers of people from minority ethnic groups did not complain because of lack of confidence in the process because the system didn't take their complaints seriously.

For the first time ever this research has established and identified the hidden figure of police complaints levels of interaction and victimisation, especially with those people who represented the least powerful in society and who are deemed the socially excluded. It presented a picture of policing styles and practices (both legal and extra-legal) including levels of police deviance that adds meaning to the current police role .

In sum the complaints system fails ethnic minorities, is unable to hold police officers individually to account, lacks public confidence and does not work.

What follows will therefore concentrate on first principles and on the relevance of the model with respect to the institutions of the police, the PCA and the Home Office.

#### **TAKING COMPLAINTS AGAINST POLICE SERIOUSLY - AN IDEAL SYSTEM OF COMPLAINTS AGAINST POLICE.**

In the United States a number of National Commissions have considered the issue of public dissatisfaction with police, including the methods of communicating and recording that discontent. In 1968 for example the National Advisory Commission on Civil Disorders (Kerner Commission) considered avenues for opening dialogue between government, police and urban ghetto residents following serious disturbances. Their fundamental aims were to consider methods of communicating public dissatisfaction and to resolve the problems by creating a credible and convincing system of



complaints. In their final report they stressed the need that making a complaint should be easy, convenient and informal. (Radelet, 1986; Moore, 1992).

In England and Wales one could hardly suggest that the system of complaints against police was any of these. In fact it is not well known, complex, very time consuming and extremely formal. Perhaps a lesson should be learnt from America where the Kerner Commissions recommendations may be the key to greater confidence in the police and/or reveal a more accurate picture of police misconduct.

#### INFORMING THE MODEL- THE MOVE TO UTILITARIAN IDEALS.

The proposed 'good practice' model is by nature a prescriptive one. The model was developed and informed by taking many of the imperfections shown in the thesis and applying the customer focused standards of fairness, equity and probity to make for a more useful system. Much of the old system was based on the implied assumption that the general public were all assimilated; meaning that they were all literate, educated, spoke English, were aware of and had confidence in the processes and also knew how to take action if necessary. The assumption was of an assimilated Britain: not a multi-cultural one. A more accurate picture establishes that many black and Asian people are socially excluded from the ability of making a complaint for a variety of reasons and is compounded by the fact that they continue to be the subject of disproportionate focusing by the police. This means that making a complaint at the same place where arrest, detention and charging takes place may covertly discriminate against them. This indicates an imbalance where access to remedy is therefore more limited than for white people. This suggests inequality or even discrimination. Change should be implemented at three distinct levels of the process namely: strategically, administratively and situationally.

#### STRATEGICALLY

Removing processes which overtly or covertly exclude some members of the community from complaining should be a fundamental goal. This should be particularly relevant for those who regularly come into contact with the police because of their social exclusion e.g. the poor, uneducated and the vulnerable. Those who are unable to read and write and those who have English as their second language would all be included and not

disenfranchised. The present situation shows that many people are either unaware of the processes, fail to understand them or are simply too frightened to complain; a predicament that should not be allowed to continue. Furthermore a public commitment should be made by the police to build customer satisfaction not just to placate the dissenter. To do this requires a shift in political will and thinking with the move to an independent non police investigation agency with the powers to carry out the task. Therefore, this model assumes that the future of police complaints and discipline involves an independent element of investigation and resolution in line with recent Government proposals. (For examples see Appendices 6, 7, 8 and 9).

#### ADMINISTRATIVELY

Systems should be simple, uncomplicated and expeditious: therefore a streamlining and simplification exercise should identify areas of concern. For example, the introduction of a complaints form which would involve a "tick box" system could be used. The form could be read out, ticked by the reception officer/civilian and signed at the end by the complainant. Even if this was not possible a third person could undertake the process. If such a form is used then it may be possible for the details to be scanned onto a computer system which reads it and provides a short statement of the facts. This would save time and also provide the complainant with a copy of the complaint. Such forms could also provide contact telephone numbers, e-mail addresses and details of postal addresses for advice, guidance and explanation (A copy of such a form is shown at Appendix 5).

#### SITUATIONALLY

Ideally there should be a system which people are able to use with confidence that their complaints will be heard, investigated and resolved. The fact that complainants have to visit a police station in order to make a complaint deters some people from doing so. This reticence, inhibits the ability of the appropriate authority to listen and put right the criticism. Instead, the complainants friends, relatives and others hear of their discontent. Turning this round requires co-operation between the police and the public which allows for a system of equal access, openness and simplicity.

This thesis has shown that the issue of discretion and the peculiar legal position of police is problematic. Discretion inhibits the functionality of the complaints process. The control of discretion in this instance needs to be addressed and can be overcome. This can be achieved by placing a statutory

obligation on the police (or independent agency) by imposing a 'code of practice' on complaints management, in the same way that Section 66 of PACE regulates practice on suspects rights during detention. As PACE is a 'live' piece of legislation and therefore subject to periodic revision without recourse to further legislation, it may be practical to include them as 'CODE F' of PACE. In this way the issue of discretion is removed as meanings, interpretation and guidance becomes regulated.

This model redresses the issue of imbalance, equality and disproportionality by proposing a complete strategy of complaints management. It should be seen as customer focused, taking in many of the concepts, ideas and suggestions, that gives confidence to the complainant that the matter is being taken seriously. Improving the overall practicality, access and functionality offers the rewards of admittance to the process for the common good of all not just a chosen few.

#### THE UTILITARIAN MODEL

##### **Pre-complaint strategy**

The main failings of the police complaints system relates to its practicality and functionality. More specifically there is an assumption that sufficient public knowledge and awareness exists regarding the procedures on what action to take and when to take it. At present information is only really available in a small number of places such as inside police stations and at the PCA. There should be a wider distribution of access points from which printed data can be obtained and these places should not only relate specifically to police buildings. They should include Government and Local Government buildings including Town Halls, Libraries, Job Centres, Citizens Advice Bureaux and the Offices of the Commission for Racial Equality. Additionally, consideration should be given to distributing forms in Solicitors offices. The information should come in the form of small pamphlets which are already available and have been produced in a number of different languages. At present there is a limited distribution of complaints information so the following strategy should overcome this problem by printing details in the simplest possible terms and supplying information with telephone numbers, web site addresses and contact points.

A complaints campaign with posters should be on display in all Government and Local Government buildings including Town Halls, Libraries, Job Centres, Solicitors offices and Citizens Advice Bureaux including the Offices of the Commission for Racial Equality. These details should be

informative and should include details of any appeals provisions. There should be a 24 hour manned help line to give personal advice to aggrieved persons or people seeking general advice. A dedicated and secure computer web site could aid the communication problem which would create web pages outlining procedures, giving advice and information. Consideration should be given to making this an interactive site where general information and outside research could also be posted or supplied to enquirers. Additionally this site should also give accurate and up to date statistics on police complaints drawn from PCA/Independent Agency Annual Reports, Chief Officers Annual Reports, HMIC documents and Home Office Research Publications.

There should be a dedicated commitment on the part of the police to the impartial investigation and discharge of legal and disciplinary responsibilities. This primarily concerns signing up to and communicating its aims and objectives to the public in advance. The following section deals with this issue in depth in the form of issuing a 'code of practice' to demonstrate its commitment. The 'code of practice' would relate to reception, initial reporting, recording and disposal of all complaints made by members of the public. To further the issue of openness any police investigation should be overseen by an independent civilian manager who has the authority to direct or control the inquiry.

#### **Code of Practice - police/agency charter**

The complaints process should be customer driven and demonstrated by a strong commitment and determination to public participation and co-operation. Rather than dissuade members of the public on complaints they should be positively encouraged. The code should contain details on initial procedures which ensure that reporting should not be accompanied by a fear of harassment or reprisal. The introduction of an independent investigative agency should go some way in remedying public apathy. Furthermore, the reporting of a complaint should not be hindered, obstructed or delayed and all complaints must, be written down, recorded in the General Register of Complaints and investigated. A police/agency 'code of practice' or charter outlining service commitment for dealing with complaints and complainants should send a clear message to the vulnerable, insecure and socially excluded. This should be widely available and either published separately by the police in conjunction with the proposed independent complaints agency and/or included in the general multi-lingual complaints pamphlet. All stages of the process should be explained including what happens if the officer is prosecuted and/or disciplined.

The formalities of making a complaint will be included in the pamphlet along with the 'code of practice' objectives which must show a commitment to making matters the least taxing and most informal as is reasonably practical.

### **Making the complaint**

Making a complaint should be easy, informal and as uncomplicated as possible. The procedure should also be as expeditious as possible. People should be given as much assistance as possible to communicate their complaint. These methods should be left to the complainant to decide - however their expectation or preferred outcome should be sought from the outset. Complaints should either be made in person to any of the designated locations, by telephone, via the Internet to a designated web site (e.g. Home Office, PCA, Independent Complaints Agency or local police) or in writing to any of the designated sites.

The process would be greatly expedited with pre-recorded templates which are prepared in advance. These could also be posted either by hand or placed onto any secure electronic system like a web site on the Internet (An example of such a form is shown in Appendix 5). One of the main problems for police (or any independent agency) would perhaps be the sheer scale of coping with the volume of information and complaints. There would of course be a number of matters originating from malicious individuals who could overwhelm the process or attempt to shut down a system in this way. The method must include a system that is secure so that details can not be seen by unauthorised people. This may be overcome with a numeration system and confirmation process. Use should also be made of the successful 'informal resolution' system which may continue to deal quickly and efficiently with a large volume of complaints.

The option of a pre-recorded, user-friendly proforma as discussed earlier, should be numerated on one index to prevent duplication, loss or error in recording the original complaint. Complaints should only be made at certain designated sites and a list of these should be available to the prospective complainant. The list of designated sites, as mentioned previously should include the Police Station, certain Government Offices, the Police Complaints Authority (PCA) or Local Government buildings including the Town Hall, Borough Offices, Libraries, Solicitors Offices, Citizens Advice Bureaux, the Offices of the Commission for Racial Equality, or to designated Internet sites.

Apart from the commitment on the part of the police to the complainant and the issue of a 'code of practice' or charter by the police, there should also be an established set of rights which pertain specifically to the complainant. This establishes that the process is open to anyone and has an appeals system if the complainant remains unsatisfied. The restrictive practice of deciding who can complain and who can't should be removed in order to establish a greater confidence in the process. These are discussed in depth in the section below.

#### **Rights of the complainant.**

All persons, irrespective of their background and experience, should be able to make a confidential complaint against police. This principle should be enshrined in any charter and emphasised by specifically mentioning the fact that complaints can be made by anyone, irrespective of race, colour or creed. Built into this should also be the fact that cultural sensibilities will be acknowledged if the complainant so wishes. Complaints should not be restricted to members of the public but should also include other police officers, their wives and family, members of the civil staff, volunteers and members of the Special Constabulary.

Greater confidence would also be established quickly if complainants shared the investigative experience and were made to feel that there was nothing to hide. Let us not forget that people only complain rarely and often only do so once. It is essential to display confidence and trust therefore complainants should be allowed to inspect complaints files at periodic intervals to guard against accusations of a whitewash. Furthermore, all complainants should be kept informed of the progress of enquiries and there should be established time limits on the various stages of the investigation. These time limits should be published in advance. Police officers who are the subject of the investigation should also be periodically updated on the progress of the complaint.

From the outset, the complaints process should seek to establish *the truth of the matter* in respect of all complaints. This is a founding principle of the proposed new system. In establishing the truth the investigating officer will consider the issue of blame according to the circumstances of each individual matter. This means that as part of the investigation the liability is apportioned to the various parties involved. It will become an assumption that the truth will be established according to the legal principle of "beyond all reasonable doubt"- the legal standard of proof. As this process will be comprehensive

and thorough there will be no need to become involved in litigation. Where a complainant still remains dissatisfied or the establishment of guilt is still in question resort to civil action may be necessary. Notwithstanding this, no civil action against the police will be allowed unless the complaints process has been thoroughly exhausted.

The new system will require a change of strategy and management of complaints. The changes will be wide ranging and will create certain problems. One of the problems will be the spread of information and policy which will require a commitment to training. This is dealt with in the next section which deals with the police response to complaints.

#### **The police response to complaints.**

The commitment to complaints is essential in order for the strategy to be carried out. This will impact on the three tiers of policing. These are the Chief Officers (ACPO), the Superintendents and those from Chief Inspector down to Constable. This will have a training implication. The change in ethos also requires any officer/police civilian to be in a position to record the details of a complaint. Specific training on complaints should be given to appointed personnel, ensuring that there is more availability of staff and that Sergeants and Inspectors are not solely responsible for recording and complaints reconciliation. Where an Inspector or Sergeant is unavailable, it should be the responsibility of the Reception officer to deal with the matter.

No pressure or duress will be applied to dissuade a complainant to withdraw or not proceed with their complaint. In the event that a person wishes to withdraw their complaint then this will be accompanied by a statement from the complainant which also expresses his/her satisfaction. From the outset complainants should be asked what expectations of possible outcomes they may have. On realising this it would not be unreasonable for the police to give a sincere apology, either on behalf of, or even by, the officer.

Such a strategy will only be successful if more information is made available from the vast amount of data recorded and stored by the police about complaints and even complainants. For example, profiling of police officers should take place in order to give managers an opportunity to consider the staff under their command. The data would be able to tell them about previous behaviour, but also be capable of providing a profile of age, sex, race, education and rank. From this management would be able to construct an outline that may assist in identifying potential deviant personality

characteristics. Additionally information can be obtained from an alternative perspective so, rather than considering personality, the available data should be gathered on likely offence. This information should be published by the investigative agency in conjunction with the police. Any appropriate remedial action should be taken in consultation with the police.

### **The rights of the accused officer**

The accused officer will be dealt with fairly and in accordance with his/her civil and legal rights. The officer is afforded the same rights as any other person who is subject of a criminal investigation set out and redefined by the Criminal Justice and Public Order Act 1994. The officer has the right to remain silent, answer questions or give an account. However, in disciplinary matters it seems appropriate that during investigation there should be no such right to silence. This matter was not enacted in the Police (Conduct) Regulations 1999.

Complaints should be time limited. This means that subject to public interest or the availability of new evidence and subject to the discretion of the new investigative agency, matters which are older than 18 months old will not be investigated.

If an officer is recommended for discipline, copies of the relevant papers including all statements and documents gathered during the investigation will be served on the officer not less than two calendar months prior to the hearing. Otherwise matters highlighted in the Police Act 1996 and the Police (Conduct) Regulations 1999 apply to the accused officer. The disciplinary hearing may consider granting compensation to the victim of a substantiated matter. Equally, in the event that the evidence was false, did not come up to scratch during the hearing and/or the accused officer was totally exonerated then due regard should be given to awarding compensation to that officer. Additionally, if no award was considered or made then the accused officer should have an avenue of redress through litigation.

The following section relates to complaints management where promotion, transfer and specialisation should rely exclusively on the ability to control behaviour. This sends a clear message that bad or inappropriate behaviour will not be tolerated at any cost.



### **Complaints management**

A central record of all complaints should be maintained by the proposed separate investigative agency, and would replace the ad hoc situation which currently persists. The public should be informed of all disciplinary recommendations, action or formal disciplinary matters taken as a result of a citizen complaint. Substantiation rates should be published annually either by all forces or the PCA (or Independent agency). Complaints statistics should not be used as a measure of police performance, however there should be a strategic overview of complaints management on an area, force and national basis.

The notion of policing in England and Wales rests on the principle of local rather than national enforcement. There are forty three different Police Forces within England and Wales and potentially forty three different styles, however there is a need for co-ordination in terms of managing complaints and discipline. Therefore, the Home Office should issue national policy abolishing individual computer systems in favour of a national networked system which could exchange information. This would allow for better management of complaints by the police and also give them the power to question the record of any individual officer and make any informed decisions regarding promotion, transfer or training. On a local level the suitability for transfer to another force should depend on the potential for complaint and so use may be made of a psychological outline aided by a complaints profile as highlighted earlier.

The availability of analysed data should be improved. Complaints data from a variety of sources should be merged in order that a comprehensive document revealing the statistics could be produced for general usage. All complaints statistics for England and Wales showing the current year compared to the last three should also be published by the PCA or Independent Agency in one document, showing trends, numbers supervised by PCA, seen by PCA and voluntarily referred.

The following section provides for a fail-safe system where victim and customer survey results are obtained to consider problems, issues and concerns in respect of the system.

### **Ensuring the system works.**

Periodic surveys should be carried out separately and independently on complainants (current and past) to test the effectiveness and efficiency of the

new system. These victim surveys should tell the reality of police/public satisfaction levels. The data base should include figures originating from people who have had experience of the system and wish to share their experience. These surveys should include samples origination from minority ethnic groups.

Many people, especially those on low income, are severely inconvenienced by the process of making a complaint. Often they have to travel in order to complete the task. If police or the Independent agency are to take these matters seriously then consideration should be given to providing reasonable out of pocket expenses which are paid to a complainant to compensate for any transport costs. The offer of return transport should be made at the discretion of the reporting officer; the cost being borne by the police service or Independent agency. After a complaint has been investigated the Independent agency should have the power to compensate the complainant without effecting any other avenues the complainant may seek for financial redress.

The following model summarises the main points of the proposed new system of complaints.

### **The Utilitarian Complaints model**

#### **Pre-complaint strategy**

- i) Complaints mechanisms and how to complain should be widely published;**
  - a) Pamphlets explaining the mechanisms should be printed, in the simplest possible terms and in different languages.**
  - b) A complaints campaign with posters should be on display in all Government and Local Government buildings including Town Halls, Libraries, Citizens Advice Bureaux and Offices of the Commission for Racial Equality etc.**
  - c) They should include details of any appeals provisions.**

d) There should be a 24 hour help line or web site giving advice and information on the complaint processes and procedures. The help line would be manned by the PCA (or the independent agency proposed to replace it), to investigate complaints.

### **Code of Practice**

ii) The process should be customer driven which should be demonstrated by a strong managerial commitment to complainant as a client.

a) Public participation and co-operation on complaints matters should be encouraged.

b) The process should not be accompanied by a fear of harassment or reprisal.

c) The reporting of a complaint should not be hindered, obstructed or delayed.

d) Irrespective of who receives the complaint all complaints must be written down, recorded in the General Register of Complaints held by the agency and investigated.

e) The complainants legal and civil rights must be acknowledged.

e) A Police/Agency 'Code of Practice' or charter outlining the aims and commitment for dealing with complaints and complainants should be published.

### **Making the complaint**

iii) Making a complaint should be easy.

a) The process should not be complex or unnecessarily formal.

b) It should be expeditious.

iv) The method of how to report the complaint should be left to the complainant. The choice can be exercised at one of the four alternatives described below.

a) In person to any of the designated locations.

b) By telephone to any of the designated locations.

c) Via the Internet to a designated web site.

d) In writing to any of the designated sites.

v) Pre-recorded templates (See Appendix Four) and electronic systems.

a) The option of a pre recorded user friendly numerated proforma or templates should be made available.

b) A complaints template should also be posted onto a Government Complaints, PCA or Independent Agency web site for use via this medium.

c) The list of designated sites should include the Police Station, Government Offices like the Police Complaints Authority (PCA) or Independent Complaints Agency or Local Government buildings including the Town Hall, Borough Offices, Libraries, Citizens Advice Bureaux, Offices of the Commission for Racial Equality or to designated Internet sites.

#### **Rights of the complainant.**

vi) The fact that the complainant considers the matter worthy of a complaint against police should be enough for the matter to be recorded.

vii) Complaints should not be restricted to members of the public but should also include other police officers, their wives and family, members of the civil staff, volunteers and members of the Special Constabulary.

viii) Complainants should be regularly updated and also allowed to inspect complaints files at periodic intervals to guard against accusations of a whitewash. Time limits on investigations must be published.

viv) All complainants should be informed by the agency of the outcome of the complaint by letter. The agency's decision is final. However if new information or evidence comes to light which was not available at the time the agency may commence a new investigation.

x) No civil action against the police will be allowed unless the complaints process has been exhausted.

#### **The rights of the accused officer**

xi) The right to be dealt with fairly and in accordance with his/her civil and legal rights. The officer has the right to remain silent, answer questions or give an account. In disciplinary matters it seems appropriate that during investigation there should be no such right to silence.

xii) Complaints should be time limited e.g. 18 months limit subject to the discretion of the Independent Agency.

xiii) The right to compensation if a matter is mendacious, is disproved or the officer is exonerated.

#### **The police response to complaints.**

xiv) Specific training on complaints should be given to appointed personnel (police or other) ensuring that there is more availability of staff and that Sergeants and Inspectors should not be solely responsible for recording and reconciling complaints.

xv) Complaints should be allowed against all police personnel, not just police officers. Included in this list would be cadets, civil staff, volunteers and members of the Special Constabulary.

xvi) Complaints forms should be simplified and so be easier to use and understand.

xvii) Withdrawal of any complaint should be accompanied by a statement from the complainant which also expresses his/her satisfaction.

xviii) Complainants should be asked what expectations on outcomes they may have. It would not be unreasonable to accept an apology either on behalf of or by the officer. It may be necessary to consider 'corrective redress' through mediation with the complainant, officer and supervisor to consider solutions.

### **Complaints management**

xvii) A central record of complaints should be maintained.

xx) The public should be informed of all disciplinary recommendations or any action taken as a result of a citizen complaint.

xxi) Substantiation rates should also be published.

xxii) Complaints statistics should not be used as a measure of police performance.

xxiii) All complaints statistics for England and Wales showing the current year compared to the last three should be published in one document, showing trends, numbers supervised and investigated by Agency/PCA, or seen by the Agency/PCA. Details of complaint resolved informally should also be published.

### **Ensuring the system works.**

xxiv) Periodic customer surveys should be carried out separately on complainants (current and past) to test the effectiveness of the new system. These victim surveys should tell the reality of police satisfaction levels.

xxv) Reasonable out of pocket expenses should be paid to a complainant to defray any transport costs or the offer of return transport laid on by the police should be made at the discretion of the reporting officer; the cost being borne by the police service.

**xxvi) The proposed Investigative Agency should have the power to give compensation to a complainant in cases where they see fit. This is in addition to other avenues for fiscal redress or remuneration which may be open to the complainant.**

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## Appendix One

### The Methodology

#### THE RESEARCH DESIGN.

This Appendix briefly describes and evaluates the two different research designs employed in this study. These were the analysis of data on police complaints supplied by the PCA and evaluation of figures taken from a comprehensive victim survey entitled the Finsbury Park Crime Survey. This section also considers a number of aspects of both methodologies; including access, provision of data, limitations of statistics, questionnaire planning, sampling and methodological difficulties. By looking at all these it was possible to compare and evaluate centrally recorded figures and victim study results which revealed both strengths and weaknesses of such quantitative and qualitative research methodologies.

The original aim of this research was to use the statistical method in order to discover the hidden figure of police complaints. This could have been achieved by access to the police through the PCA and the Home Office. It was intended to survey supervising police officers responsible for receiving complaints made against police at police stations as a means of explaining why complaints were being ignored, unreported or unrecorded. However, whilst this model was useful in some ways, it failed to deal with the original aim, therefore an alternative was used.

The model of analysis employed to evaluate complaints statistics shown later in this appendix, was similar to that illustrated by Coleman and Moynihan (1996) in their excellent publication entitled Understanding Crime Data.

#### THE STATISTICAL METHOD.

Any discussion regarding levels of crime always starts by reviewing official crime statistics. At the beginning it was logical to start any research on police complaints by considering the figures the police were legally required to gather, collate and disseminate.

#### SOURCES OF DATA

The primary source of police complaints data originates in the "Annual Report of the Police Complaints Authority". The data includes charts giving types of complaint shown against the individual police forces of England and Wales, including a number of other non Home Office forces. Further sources

of specific information on complaints can be found in each of the forty three Chief Officers annual reports submitted to the Secretary Of State for the Home Department, Annual Reports compiled by Her Majesties Inspector of Constabulary and the bi-annual Home Office Statistical Bulletin entitled "Complaints and Discipline". The first three publications relate specifically to complaints by members of the public; however the latter text deals with general longitudinal details on the subject.

The PCA are responsible for civilian over-view of citizen complaints and each year they are legally required, as are the police to produce a final report for the benefit of the Home Secretary. This document summarises data sent to them by the 43 individual Home Office Police Forces of England and Wales<sup>1</sup>. This document provided only a one year snap shot of figures and did not compare or contrast police areas in terms of errant behaviour retrospectively, although it did identify some general trends. It was not a particularly useful document for my purposes because specific problems were not shown in the published reports, leading to the supposition that when there is opposition conversations were conducted in private and news of any conflict failed to reach the public domain.

The first data set was devoted to figures gathered by the PCA (both published and unpublished) which could be analysed and evaluated over time, space and according to theme. The figures provided details of all complaints recorded by them for statistical purposes from 1993-1997. These were divided into complaint allegations which corresponded to the specific discipline code offence. The PCA also provided details of previously unpublished public survey data on "Attitudes towards Police Complaints". This also enclosed an ethnic booster survey.

#### AIMS OF THE RESEARCH METHOD

The object of this study was twofold. First, to gather complaints information from a number of various documents and show these particular statistics in an understandable, less formal and complicated form; not previously seen. Second to provide a localised perspective of accountability thematically, individually and geographically.

To do this it was essential to provide a picture of the problem by supplying rates of complaint over a given period of time, as in fact the British Crime

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<sup>1</sup> There are at least six non Home Office Forces who submit their own complaints data to the PCA willingly. These include the United Kingdom Atomic Energy Authority Police, The Ministry of Defence Police and British Transport Police.

Surveys do when they compare force areas in terms of official crime figures. From this standpoint it is possible for data to aid comparison and show diversity. The demographics focusing on the ratio of numbers of police officers to population and on the numbers of complaints per police officer in a given area also give an indication of management styles, commitment to complaints, and policing policies. This methodology involved looking for and finding credible totals for population in specific police force areas, and to consider numbers of complaints made per 1000 members of the public. Local authority, county and borough boundaries are not coterminous with police areas so this represented a significant difficulty in terms of collection and analysis.<sup>2</sup> Accordingly, comparisons and conclusions are based specifically on Police Authority Areas.

Once the data had been examined I merged the details into a succession of charts and block diagrams using the Statistical Analysis program Microsoft "Excel". This took a considerable amount of time. Once complete, the method of analysis employed within this research study took the following path: the numbers of all reported complaints made against police, no matter how insignificant, were collated, reviewed and assessed (Table 8.1) including those matters reported to the PCA, (Table 8.2). Table 8.3 contains two sets of geographic details, firstly of all complaints made and secondly of the more serious matters. In the case of the second data set these are complaints where there is no discretion and they require immediate reporting to the PCA under the statutory requirement provided by the PACE. These were counted because they were matters considered the most grave and in many cases liable to attract media and/or public attention. Those more serious matters were examined both geographically and demographically. Following this, numbers of police officers to members of the public were calculated in order to consider the geographic frequency of officer to public ratio (Table 8.4). Police numbers were then compared to complaints - which allowed for geographic frequency of police behaviour according to numbers of complaints per officer to be shown (Table 8.5).

The next consideration involved behavioural issues, especially those individual offences that were common and of grave concern to the PCA. The most common complaint were those of assault and these were collated and evaluated according to geographic and demographic variables (Table 8.6). Lastly, using the same base document with the assault allegations, other behavioural complaints were added. These included any behaviour likely to result in conflict according to the relevant discipline offence committed.

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<sup>2</sup> Figures supplied by ACPO statistical office located at the Home Office.

Table 8.7 consists of the merged document showing these allegations to be complaints made about incivility, harassment, Stop and Search, assault (and serious assault), oppressive conduct and racially discriminatory behaviour. Each one of the allegations relate to incidents that are likely to take place either out on the street or in police transport prior to arrival at the station. This I have termed “Pre-charge room behaviour” because the charge room is the place where all prisoners are taken for recording, detention and charging. For such an allegation to have been made there must have been a disagreement, dispute or plain outright conflict. In this way it was possible to measure the behavioural data on a geographic basis which may indicate the institutional nature and attitude of police officers.

#### THEORETICAL ORIENTATION

Coleman and Moynihan in Understanding Crime Data use three frames of reference when considering official statistics: namely realist, institutionalist and radical. They show that the realist approach (not to be confused with left realist) was initially concerned with the accuracy and completeness with which data represented the “real crime that takes place” (Biderman and Reiss, 1967, p2). The second standpoint, referred to as the institutionalist model re-conceives official data as products that are socially constructed urging the study of official data in terms of outcomes of both social and institutional processes. The third (or radical) perspective questions some of the basic elements of the way in which the official picture of crime is produced. This method questions the definition of crime itself, the structures of the law, the way in which crime is presented, and the operation of the system charged with processing those who are criminalised (*Ibid*, p44). It does not deny that the other two perspectives exist but attempts to expand on the institutionalist approach by emphasising a broader, structural, more radical methodology, concentrating on the processes and interactions which are at play within the context of wider social structural arrangements. In this way particular attention is placed on class conflicts (*Ibid*, p16) The models provide their own theoretical positions and each of these identify assumptions and questions with which to interpret the statistics.

The analysis of numerical data concerning complaints broadly used the institutionalist model of examination in order to understand some the more important aspects of the process of complaints and criminal justice, including the role of the public. As the figures are assumed to be socially constructed this frame of reference permits analytical settings to be made using four main sub-headings: discovery, reporting, recording and resolution. Data analysis allows us not just to accept figures at face value but to assess their usefulness

according to their origin, relevance and method of collection. Data from official statistics, self-report studies and victimisation surveys need to be complemented by special research studies, including those which offer the distinctive contribution of more qualitative approaches. Coleman and Moynihan suggest that crime data can tell us about the nature, extent and distribution of the problem. The same must of course relate to the analysis of complaints statistics. Aggregate statistics remain the favoured method of talking about the crime problem and some progress has been made which identifies broad patterns and trends. (Ibid, p142)

### **Discovery.**

Coleman and Moynihan assert that discovery is a misleading term with crimes being easily recognisable and just simply out there. This is too simplistic because people differ in their view of what a crime is, how it is made up and who are losers or victims (Ibid, p32). What is true of people in general must also be true of police officers too. The police maintain the use of coercive force and often some people accept that the practice in a particular neighbourhood is for the police to slap suspects during interrogation in the street. Such people will expect and accept this practice as an everyday occurrence; part of their being labelled criminal. Often there is a presumption that a crime must have a victim while some are completely unaware that they have been a victim. Often those who are frequently the subject of police violence accept the situation as normal - therefore they do not consider themselves victims. Many regard themselves as unfortunate rather than a victim, thereby choosing not to report the matter. This avoids the need to report the matter to the very people who were responsible for the assault in the first place and reduces the fear of further harassment and reprisal.

Very little is known about this area although the groups who discover police misconduct are often members of the working class or minority groups. Offences with or without victims committed by the police must be dealt with by both internal and external control mechanisms in order to overcome continued lapses in discipline. Internal police managerial control mechanisms tend to be strong and effective. For example in 1992 the MPS recorded that forty two police officers faced discipline as a result of public complaints whilst a further sixty five officers were detected via other circumstances within the police disciplinary system and dealt with accordingly (Commissioner for the Metropolis, 1992 p111). Amongst other factors, this tends to suggest that internal police disciplinary processes are working, especially when they reveal more offences against discipline than those

detected and reported by complainants, accusers or victims. This may be explained by under reporting and recording or simple dissuasion at the point of complaint.

The notion of discovery seems far more pronounced with regard to allegations of assault on citizens than for any other police deviance. When the police discover crimes they often focus on victimless crime or crimes without victims. In this context victimless crimes would include 'found committing' offences say in respect of public order, offensive weapons or drugs matters. So from a complaints perspective there is an assumption here that police are especially uninterested in crimes involving themselves.

### **Reporting**

The analysis of statistical data relates specifically to the counting rules; what gets counted in or left out. The very agencies which collate files and collect data rely on their internal policies for counting, which often means it is impossible to compare like with like. The way figures have been counted over a given period of time, changes in time frames, collecting methods and increased sophistication all add to the problem that makes comparison limited. From time to time changes in these policies can actually be detected in the data itself. The nature of people's experiences can have a significant effect on incorporation as they bring with them their own biases, perceptions and baggage, a point well made by Coleman and Moynihan who state that;

"The information produced by official statistics and survey methods is abstracted from rich and complex settings by human agents who attribute a variety of meanings to their experiences"(1996, p133)

### **Recording**

Coleman and Moynihan noted that "recording" should be placed into context and that recording practices are heavily influenced by social, political, organisational and situational perspectives.

On a social and political level the authors highlight the lack of attention and will to deal with particular problems, especially those which capture the public and political imagination and are thrust onto the agenda. In terms of police complaints, attention originated in the early 1960's, and continued through to the mid 1970's, the early 1980's and virtually the whole of the 1990's. This attention should be placed into context and must be seen against a backdrop of rising concern regarding the apparent lack of police



accountability. Such attention ensured that police officers should be more individually responsible and accountable to the public than they had previously been and that restrictive practices in the form of legislation would ensure compliance.

On an institutional level recording practices have changed in response to variations in personnel, working practices, professionalisation and improvements in record keeping. In a situational context crime reporting and recording depended on a variety of local factors, influenced by the seriousness of the offence, the relative distance between victim and offender and the deference to the police by the complainant. The production of complaints statistics are affected in the same manner as crime figures because they rely on the same constraints, influences and considerations.

The compilation of any data also relies heavily on use of discretion, a subject which is no stranger to the police and which the police in particular use to their advantage. Usually bad numbers are presented in a positive way and this ensures that the police are not wrong footed, embarrassed or over criticised. In this way politics, or “spin” as it is now called, seems to influence how and what gets produced. Data which accords to the underlying agenda is often used, manipulated or cast away depending on its current usefulness.

### **Resolution.**

Coleman and Moynihan refer to this final heading as “clearing up” however for the purposes of this evaluation it was more appropriate to suggest the term “resolution” as the final outcome.

Police complaints data provides a picture of offending against the public which should be seen in both the legal and disciplinary context. Clear up rates, like complaints statistics, must be understood within the context in which they are produced. Therefore a major problem for the complaints process is belief in the complainant that affords higher levels of substantiation. This may be a problem of the quasi-judicial disciplinary process which relies on legalistic parameters, although the replacement of the discipline code with a code of ethics has attempted to move away from this premise. The standard of proof of beyond all reasonable doubt, may also act as an inhibitor to natural justice certainly as far as the complainant is concerned.

The resolution of complaints relies on an unbiased and proper investigation of the facts which attempts to get to the truth of the matter. The current system relies on the police to carry out this function, a factor which has traditionally attracted criticism. However the PCA have often stated publicly they are happy with police investigating complaints against police and also remain content at the level of investigations carried out by the police. They have, until recently, also contended that police investigating themselves remains the most effective and economical method. The exclusive knowledge afforded police officers may certainly constrain investigators during the enquiry or aid them in finding reasons for disbelieving the complainant in preference to believing a colleague.

Another inhibition to resolving complaints satisfactorily which also besets these figures particularly, remains the lack of proper identification of errant police officers especially at public order events where violence occurs. It is fair to state that police managers have attempted in the past to resolve this difficulty and officers are issued with individual numerals which are carried on shoulders and riot helmets at all times. All vehicles carry peculiar markings in order that they can be identified. Serious complaints against police, especially involving a serious criminal offence where either a group or an individual police officer can not be identified, is a serious disqualification and grave cause for concern, especially when it fails to resolve the issue in a satisfactory manner. The lack of integrity and honesty on the part of the police officer by not coming forward almost certainly disqualifies him/her from holding the office of constable.

#### LIMITATIONS

The analysis of complaints data has shown both strengths and weaknesses. The face value of any numerical data is reliant on the processes, methods and rules for counting at the police organisational level <sup>3</sup>. Apart from the legal counting rules set up under PACE, account should also be made of the particular counting rules used within the PCA, HMIC and the Home Office, which is often secretive, confusing and complex.

As the preferred choice of analysis by Government, statistical analysis lists among its strengths, the ability to show (as a product of the organisational process) that certain trends, variations and representations may be present.

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<sup>3</sup> This means that data is gathered at Station level, passed to the Divisional station then onto Headquarters. What gets included is dependent upon decision making at these levels prior to publication.

The ability to question the figures may provide a basis for an ideal framework for developing best practice in terms of complaints management, because such matters should not just be accepted purely at face value.

An advantage of statistical analysis, especially on the issue of police complaints, relates to the level of managerial commitment in taking customer complaints seriously. This is reflected in operational and organisational decision-making at various levels of the hierarchical police structure. Decisions to modify procedures occur with issuing policy that revolves around reporting and recording practices. Such analysis allows for measurement, comparison and evaluation which can give some meaning to the results. It may also highlight a variety of anomalies, trends and variables worthy of consideration. It can also be said that statistical analysis can give an insight into financial implications by costing individual actions. Accordingly, Treasury - driven financial initiatives can have a bearing on the efficiency and effectiveness of the organisation in dealing with complaints and discipline. In particular these initiatives may allow for better financial management, a factor previously mentioned within this research study.

Bare statistics cannot tell us about qualitative matters and will certainly not give the observer the whole picture. They are merely an indication of the direction for further research. If we consider the statistics of football scores, we might be aware of the match result, but we are left blissfully unaware as to how the game was played, who scored the goals and what tactics were employed. Sometimes numerical information tells us more about the system than is expressed in the results, for example in Table 8.2 the years 1992 and 1993 show low numbers whereas the figures for 1994 to 1997 are nearly double the 1992/3 figures for all forces. Clearly there must have been a change of reporting and/or recording of complaints either in terms of time frame or practice for such a consistent across the board, rise to have occurred. Furthermore in the same table, Thames Valley for 1995/6 shows a complaints ratio of nearly three times that of the previous year (and ten times that of the year before that). This blip may be explained simply in terms of policing a particular event in their area such as Greenham Common or the Newbury By-pass protest. This high figure suggests a proactive and authoritarian policing style which may mean that a public order situation arose where police officers were called in from outside which seems likely to have contributed to the high score. Only local analysis could prove or disprove this notion.

Complaints statistics miss large sections of the community who lack normal access to the process, current knowledge, are apathetic, or fear reprisal, all of

which leaves them unsatisfied with the process and unable to obtain redress. These are the very people who, because of their bad experiences, help shape public opinion through street surveys or phone polls and consequently affect choices made by policy makers in a variety of ways. This in turn influences the formal and informal controls over the police.

Statistics generated from inside any organisation can only tell us part of the story, unless the victimisation study is added to any analysis to give us a broader, more appreciative understanding. Statistical analysis cannot by itself tell us what gets counted and what limitations there are in counting rules, time frame changes, changes in legislation and recording procedures. These problems do not lend themselves to allow accurate and credible comparisons, therefore the dilemma of ambiguous interpretation are a significant factor of any statistical data analysis.

Victimisation studies, on the other hand, allow us remote access to the general public for the purposes of questioning them on particular issues. For example victim studies in Islington, Leeds, Hammersmith and Fulham have been particularly successful in giving a clearer picture of true levels relating to crime and victimisation. Only then is it possible to consider the real levels of complaints against the police, those that did not bother, those who were persuaded not to and those who thought it would be a waste of time. This is not to demean statistical information because official statistics are valid indicators of serious crimes defined by the citizenry (Gove *et al.* 1985, p451). *Criminologists also use official statistics in the absence of anything better or at least in conjunction with other data for triangulation purposes (Coleman and Moynihan, 1996).*

Because of the limitations of this research method which could not satisfy the original aim I progressed onto an entirely different approach to the problem where I used data obtained by the Finsbury Park Crime Survey. It is to this method I now wish to turn.

#### BASIC CHARACTERISTICS OF HOUSEHOLDS : PROFILING THE RESPONDENT.

##### **The sample**

The Hammersmith and Fulham Crime Survey (Painter *et al.*, 1989) took place during July 1987 and January 1988. 1,315 households were visited with 452 cases generated. The West Kensington Estate Survey (Painter *et al.*, 1989b) was carried out in response to concerns from the local community regarding policing problems and crime. Respondents on the estate were interviewed to

judge the level of community input regarding proposed methods for tackling local crime.

In the case of the Second Islington Crime Survey (Crawford *et al*, 1990), 2160 households were selected throughout the London Borough of Islington from 48 sampling points drawn up using the official Post Office Address file.<sup>4</sup> This resulted in 1621 responses, a rate of 76.5%. Some 15% declined to complete the questionnaire and about 10% of residences were no longer in use for domestic purposes. Under the circumstances this was a high rate of response.

The Finsbury Park Survey of 1994 was a more concentrated local study as it was conducted only in the Finsbury Park area of Holloway. The fieldwork was carried out between July and November 1991 and was one of the largest local surveys conducted. The surveys were carried out by a team of 12 trained interviewers who were all experienced with this kind of work. All the interviewers also received training on the techniques to be employed in respect of both the main and the supplementary questionnaires. Additionally, training was provided in the use of kish grids onto which the results were transposed.

The area of Finsbury Park was chosen because it consisted of a large number of houses in multiple occupation (HMO's), properties converted into self contained flats or bedsitting rooms. From information drawn from the Post Office Address file, a sampling frame of households was constructed and a sample drawn.

There were 1497 respondents from addresses drawn in the same manner as the Second Islington Crime Survey.(It was published as a series of papers, for example, Mooney, 1993)

#### THE VICTIM SURVEY DESIGN

The second data set went beyond the phenomenon of known and recorded complaints held by the PCA and concentrated on analysing figures collected on police complaints and procedures as part of a much larger victimisation audit entitled the Finsbury Park Crime Survey.

This victim survey was one of the largest most detailed local surveys ever undertaken, at a cost of over £50,000. It asked people about crimes they had

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<sup>4</sup>The Post Office hold an address file for all addresses located within the United Kingdom.

experienced recently and various other crime related topics including levels of satisfaction, performance and service provided by the police.

The fieldwork was carried out in the Finsbury park area named administratively by the London Borough of Islington as the Durham Road Neighbourhood. This area is bounded by four major roads, Seven Sisters Road to the south, Tollington park to the north, Hornsey Road and Stroud Green Road to the west and east.

The survey interviewing was carried out on half of the neighbourhood with every other household being omitted. Once the householder had answered the door the interviewer selected a respondent randomly from all the males and females at the address over the age of 16 years. The interviewer also ensured that the gender sample was equally distributed. The design restricted itself to street crime and various forms of extra legal police practice by using structured in-person interviews which measured some 550 variables.

The development of an effective design for producing a representative sample did not present any special difficulties, however there were concerns - which had to be addressed connected with the relationship between crime and policing particularly regarding young people, people from different ethnic groups and according to gender. The survey generated data on people characterised by any combinations from three variables - age, ethnicity and gender. This was achieved using a sample on "n" respondents that employed probability sampling techniques.

Of primary concern to interviewers and researchers was the high quality of the overall design. The budgetary constraints only allowed for a maximum of 2000 in depth interviews so the task became one of ensuring the largest most accurate data set with these restrictions.

## THE QUESTIONNAIRE

A two-stage questionnaire was adopted with the first survey measuring a number of variables with respect to all respondents. The second stage questionnaire was administered to those who had been the victim of crime during the time period.

The questionnaires were designed to obtain information regarding a wide range of factors which not only include criminal matters but also about other areas of concern and interest e.g. police behaviour and public satisfaction levels. Survey questions included details of victims, offenders, the time and

place of the incident, its impact, and its reporting and/or non recording. The purpose of the questionnaire was to relate victimisation to factors which included age, race, gender, place of residence etc.... and consideration given regarding the impact of victimisation on both attitudes and behaviour.

The survey sought to address a number of concerns, namely;

- the fear of victimisation in relation to the actual extent of crime ;
- the response of police, their behaviour towards victims of crime and other members of the public who come into contact with police.
- Furthermore, and perhaps more importantly, the survey also considers the results in respect of attitudes of victims/public towards the police.

The questionnaire was designed to ensure a degree of compatibility with other victim surveys such as The Second Islington Crime Survey and the West Kensington Crime Surveys. Further considerations included a research design which ensured multi-variate analysis in order that an informational base could be established from which policy developments in respect of crime and policing could be made. The policy decisions would then be able to reflect the concerns and experiences of the people of Islington and ensure that valuable resources are placed where they are most needed. Details of the questionnaires have been omitted from this thesis save for the questions relevant to police complaints and stop and search.

The data was transferred from the victim surveys onto computer using the a spreadsheet analysis package; a process which at this stage did not use a windows application. For this reason it was not possible to read the data because the program language was not compatible with the available windows applications. To overcome this problem I converted the data collated using the computer program "SPSS for windows" <sup>5</sup> a sophisticated spreadsheet program which was simple to use and capable of speedy analysis in clearly understandable tables. Once this was achieved I questioned the findings by considering the variables of police behaviour, complaints and public dissatisfaction according to racial diversity e.g. white, black and Asian.

### ***Complaints***

The Finsbury Park Survey asked respondents whether they were seriously dissatisfied with police behaviour, whether this had occurred within the last

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<sup>5</sup>SPSS means Spreadsheet Package for Social Sciences.

three years and if a complaint against police had been made. It was necessary to use the word 'seriously' in the case of the first question simply to exclude those more trivial or incidental matters from the database. In so doing the results of general public dissatisfaction would be lower and perhaps fairer. Only those who answered 'yes' to question one were permitted to answer the next three questions.

Furthermore, questions relating to the complaints procedure and public confidence were asked. Whilst it was fine to count the respondents who made a complaint, it was felt essential to try and count those who declined to complain even though seriously dissatisfied with police behaviour, noting their reasons for not doing so. This would give an insight into the figure of hidden complaints and outline the levels of public dissatisfaction and confidence in the police. The figures for not complaining were taken as a percentage of those who were seriously dissatisfied with police behaviour.

A new system of complaints and procedures was introduced in April 1985 and a number of questions were compiled in order to gauge the public level of knowledge on this matter.

#### **Contacts.**

The Finsbury Park Survey explored rates of contact, whether voluntary or otherwise, between members of the public and police. Results showed that there were eleven types of contact which were split into two categories. These were public initiated contacts and police initiated contacts. Separating these types of contact would show individual choice in the case of public initiated contacts and police selectivity in the police initiated contacts. Results could indicated representations between white and black respondents.

#### **Public initiated contacts.**

Essentially there are four types of public initiated contact. These were;

- i) a personal call to a police station,
- ii) approaching a police officer in the street,
- iii) making a 999 call,
- iv) reporting an incident to police.

This appears to cover all the possibilities including writing a letter to the police.



### **Police initiated contacts.**

There are seven types of police initiated contacts. These are;

- i) police calling at your home,
- ii) home searched by police,
- iii) stopped by police in street,
- iv) stopped in car you were in,
- v) taken or detained by police,
- vi) searched car you were in,
- vii) stopped and searched in street.

When put together and analysed the picture of overall contact with police can be examined. The analysis broke down contact levels into their ethnic groups in order to consider representations.

### **ETHNICITY**

For this survey the term white means white European and the term black refers to black Caribbean, black African, black other, Pakistani and Indian. These ethnic groups were used because they were identical with the 1991 Census definitions which not only aided comparison but also was particularly relevant when calculations were made in the survey.

### **CONTROVERSIES OF RESEARCH AND THE SIGNIFICANCE OF LOCAL VICTIM SURVEYS.**

Victim surveys provide us with a considerable amount of important information which allows us to gain knowledge not just on the hidden figure of crime but also the hidden figure of policing. Furthermore "second generation" victim surveys cover policing as well as crime. Victim surveys allow us to gain a more accurate estimate of the problem than would ordinarily be obtained by using official statistics. Official statistics are widely recognised as being flawed as a source of reliable information because they are beset with the dual problems of under reporting and under recording. Many victims simply do not report matters or incidents to the police, and even when they do there is a likelihood that the victims are not taken seriously and matters are either not recorded or they are instantly down graded. Official statistics do not reveal the true extent of crime which is widely referred to as the 'hidden figure' of crime. A glimpse of the hidden figure in respect of robbery can be highlighted from data extracted from the First Islington Crime Survey in 1986 which stated that;

“ 53% of robberies were reported to the police and 76% of these were recorded, in other words recorded crime represented only 41% of the actual number of robberies” (Jones, Maclean and Young, 1986, p37).

Sample surveys of victimisation were first developed in the United States of America and were initially used to estimate the levels of criminality within society. Observation is focused on the victim of crime which reduces attention to the level of the individual, family or household. This research strategy usually involves asking questions of sample sections of the public about crimes, but they can be about any matter. The focus questions relate to events within specific time frames and it is essential that an accurate a picture as possible is obtained while matters are still fresh in people’s minds, therefore they usually concentrate on incidents within the last twelve months.

In this country the Home Office recognised the significance of this type of survey when it started producing the British Crime Survey in 1982. These national surveys, which are released periodically, are useful in estimating general crime trends and levels of un-reported and unrecorded crime. However, even this type of survey is beset with limitations. Firstly their findings are far too global to be of use in many areas of policy making. These results do give an accurate estimation regarding the frequency and distribution of crime when compared to official statistics but are of little meaningful help to policy makers in developing strategies which might prevent it. Secondly, national crime surveys hide the geographical density of crime within particular areas. (Painter et al, 1989a).

#### LOCAL VICTIM SURVEYS: PROBLEMS IN INTERPRETATION.

It is widely recognised that effective crime prevention and community safety strategies are reliant on accurate information which policy makers may use to measure a crime problem. Planners can establish whether or not a problem is present, if it is getting better or worse over time, if some areas rather than others are worse and whether crime and policing are exacerbated by other social problems (Painter et al 1989a).

The advantages of using local victim surveys are:

- a) Allowing for a more accurate assessment of crime, harassment and general problems in the area.

b) Gauging the confidence of the local residents in the police and other agencies.

c) Formulating suitable policy strategies and allocation of resources on identifiable problems.

There are however certain problems of use and interpretation. One of the main problems with local victim surveys relates to the assumption that the spatial distribution or social patterning of both victims and offenders who come to notice of the police are the same for those who do not. (Mooney 1991) Another factor relates to the hidden figure and indicates that within these statistics less serious and trivial matters inflate the data, thereby suggesting that the known figure of reported matters are more accurate. Care is taken in question construction to eliminate the less significant matters shown by using instances involving serious dissatisfaction, as shown for example in the first complaints question.

In considering police data a difficulty arises with respect to how crimes are recorded, written up and classified. Crime classification requires the use of individual discretion to determine whether or not a crime has been committed and then categorised according to the law. For example robbery from a person in the street requires force or the threat thereof to satisfy the legal definition, which even though present may have been creatively overlooked in order to down grade the offence to one of theft. Therefore when interpreting crime statistics later a problem with increased thefts would be detected rather than robbery. This could represent significant problems for policy makers in the fight against crime. This said, in the absence of official crime data and when nothing else is available then what information exists must be a guide and therefore of benefit.

There are three major problems with local crime survey data. The first relates to definition. For example the problem of what constitutes a public place depends upon individual perceptions rather than legal parameters; some respondents may refer to the work place as being a public place whereas the police would define it as a private one. Definitions therefore will not be shared by respondents for all situations resulting in these being included into the figures generated. One has to be careful with language and exclude media generated words and labels when asking questions; for example words like `mugging` were designed to generate a stereotypical image of an assailant for wholesale media usage and does not constitute a criminal offence. Secondly, local crime survey data may be inflated with figures from other areas. This results when a respondent has been the victim of a crime in another

catchment area and includes these matters when answering the questions. Thirdly, even local crime survey data may have its own hidden figure of crime. This can happen in two ways; i) when visitors travel through the catchment area at the time of the survey and/or become the victim of a crime which is not counted for survey purposes. It may not even be included in police statistics. ii) Response rates can affect crime statistics when large numbers of respondents fail to co-operate in the survey. The Second Islington Crime Survey (Crawford *et al*, 1990) had a response rate of 76.5% which was considered a good return, but much lower responses can mean a loss of credibility in results. This means that figures can become skewed in very much the same way as police figures are, although to a lesser extent. It cannot be assumed that the profile of a non-respondent (who wasn't asked questions) is identical to that of a respondent because if this were the case then the findings could mean that the overall hidden figure is considerably higher.

## THE USES OF CRIME SURVEY DATA.

### Social Audit.

The fact that public experience is used when considering responses to the questions allows analysts to record the real levels of whatever is being considered. In this case it is public dissatisfaction and complaints against police. These figures will include the 'hidden figure' of unreported complaints and at the same time will consider police performance. Accordingly, it can gauge public confidence in the police or in any procedure, policy or other agency linked to the system of police complaints. Furthermore, such assessments of public opinion can therefore be seen as extending the democratic process by making information available to allow proper evaluation of performance and behaviour.

### Pinpointing.

Policy makers and gatekeepers involved in the complaints processes can use the results of surveys to pin point areas with an increased incidence of police misconduct. Alternatively they can also consider best practice in those instances where policing styles should be complimented. Both situations can benefit planners in identifying specific weaknesses or problems by either increasing awareness or focusing resources to deal with the problem. Favourable reporting is likely to increase public confidence in the police whilst negative comment may have the reverse effect. Since positive public opinion about the police is paramount to acceptability of police policies and

accountability, consequentially negative comment should help the police change their methods into a more public orientated way.

### **Policy considerations.**

Survey data provides estimates of public approval and support of police and when necessary provides a framework or strategy for intervention; for example, knowledge that increased numbers of complaints have resulted from a high incidence of stop and search of people, specifically of ethnic minorities, can result in allegations of police malpractice. This type of knowledge gained through survey data can only enhance the scope for rational policy formulation.

### **Data Resources.**

Such survey work generates a database not only as a one off report but also as a resource which can be continued. When a specific problem arises in the future or if questions regarding an issue needs to be asked, then such data will not only allow for a snap shot of the problem at that point in time but also a measurement over time, allowing for constant assessment and measurement regarding the impact on policy practices. The data also provides a useful amount of general information or general demographic statistics which may complement other data.

### **Summary**

The second generation crime surveys developed at the Centre for Criminology at Middlesex University help to widen the focus from crime and policing to issues ranging from social behaviour, harassment and problems of multi-agency intervention and service delivery. They pinpoint problems geographically and socially, bringing together real experiences and perceptions of all society's groupings. They provide a vital snapshot of real life- a social audit for the community which identifies specific social problems, and provides for a strategy for intervention and resolution. What remains is a database for future enquiry and comparison.

## Appendix Two

### The Police Discipline Code (1920)

Any member of a police force commits any offence against discipline if he is guilty of-

1. **Discreditable conduct**- that is to say, if he acts in a disorderly manner or in any manner prejudicial to discipline or likely to bring discredit on the reputation of the force or the Police Service.

2. **Insubordinate or oppressive conduct**- that is to say, if he,

- (a) is insubordinate by word, act or demeanour, or
- (b) is guilty of oppressive or tyrannical conduct towards an inferior in rank or,
- (c) uses obscene, abusive or insulting language to another member of the force, or
- (d) wilfully or negligently makes any false complaint or statement against any member of the force, or
- (e) assaults any member of the force, or
- (f) overholds any complaint or report against any member of the force

3. **Disobedience to orders**- that is to say, if he disobeys or without good and sufficient cause omits or neglects to carry any lawful order, written or otherwise.

4. **Neglect of Duty**-

- (a) neglects or without good and sufficient cause omits, promptly and diligently to attend or carry out anything which is his duty as a constable, or
- (b) idles or gossips while on duty, or
- (c) fails to work his beat in accordance with orders, or leaves his beat, point or other place of duty to which he has been ordered, without due permission or sufficient cause, or
- (d) by carelessness or neglect permits a prisoner to escape, or
- (e) fails, when knowing where any offender is to be found, to report the same, or to make due exertions for making him amenable to justice, or
- (f) fails to report any matter which it is his duty to report, or
- (g) fails to report anything which he knows concerning a criminal charge, or fails to disclose any evidence, which he or any person within his knowledge, can give for or against any prisoner or defendant to a criminal charge, or
- (h) omits to make any necessary entry in any official document or book.

5. **Falsehood and Prevarication**- that is to say, if he-

- (a) knowingly makes or signs any false statement in any official document or book, or
- (b) wilfully or negligently makes any false, misleading or inaccurate statement, or
- (c) without good and sufficient cause destroys or mutilates any official document or record, or alters or erases any entry therein.

6. **Breach of Confidence**- that is to say, if he

- (a) divulges any matter which it is his duty to keep secret, or

- (b) gives notice directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the lawful execution of such warrant or service of such summons, or
- (c) without proper authority communicates to the public press, or to any unauthorised person, any matter connected with the force, or
- (d) without proper authority shows to any person outside the force any book or written or printed document the property of the Police Authority, or
- (e) makes any anonymous communication to the Police Authority or Chief Officer of the Police, or any superior officer, or
- (f) canvasses any member of the Police Authority with regard to any matter concerning the force, or
- (g) signs or circulates any petition or statement with regard to any matter concerning the force, except through the proper channels of correspondence to the Chief Officer of the Police or the Police Authority, or in accordance with the constitution of the Police Federation, or
- (h) calls or attends any unauthorised meeting to discuss any matter concerning the force.

**(7) Corrupt Practice**- that is to say, if he

- (a) receives any bribe, or
- (b) fails to account for, or to make a prompt and true return of any money or property received by him in his official capacity, or
- (c) directly or indirectly solicits or receives any gratuity, present, subscription or testimonial of character, without the consent of the Chief Officer of Police or the Police Authority, or
- (d) places himself under a pecuniary obligation to any publican, beer retailer, spirit grocer or any person who holds a licence concerning the granting or renewal of which the police may have to report or give evidence, or
- (e) improperly uses his character or position as a member of the force for his private advantage, or
- (f) in his capacity as a member of the force writes, signs or gives without the sanction of the Chief Officer of Police, any testimonial of character or other recommendation with the object of obtaining employment for a person or of supporting an application for the grant of a licence of any kind, or
- (g) without the sanction of the Chief Officer of the Police supports an application for the grant of a licence of any kind.

**8. Unlawful or unnecessary Exercise of Authority**- that is to say, if he

- (a) without good and sufficient cause makes any unlawful or unnecessary arrest, or
- (b) uses any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty, or
- (c) is uncivil to any member of the public.

**9. Malingering**- that is to say , if he feigns or exaggerates any sickness or injury with a view to evading duty.

**10. Absence without Leave or being Late for Duty**- that is to say that he without reasonable excuse is absent without leave from, or is late for parade, Court, or any other duty.

11. **Uncleanness**- that is to say, if he while on duty is improperly dressed or is dirty or untidy in his person, clothing or accoutrements.

12. **Damage to Clothing or other Articles Supplied**- that is to say if he,  
(a) wilfully or by carelessness causes any waste, loss or damage to any article of clothing or accoutrement, or to any book, document or other property of the Police Authority, served out to him or used by him or entrusted to his care, or  
(b) fails to report any loss or damage as above, however caused.

13. **Drunkeness**- that is to say if, while he is on or off duty, is unfit for duty through drink.

14. **Drinking whilst on Duty or Soliciting Drink**- that is to say, if he,  
(a) without the consent of his superior officer, drinks or receives from any other person, any intoxicating liquor while he is on duty, or  
(b) demands or endeavours to persuade any other person to give him, or to purchase or obtain for him, any intoxicating liquor whilst he is on duty.

15. **Entering Licensed Premises Whilst on Duty**- that is to say, if he, enters while on duty any premises licensed under the liquor licensing laws , or any other premises where liquors are stored or distributed, when his presence there is not required in the execution of his duty.

16. If he lends any money to any superior or borrows from or accepts any present from any inferior in rank

17. Any member of the police force also commits an offence against discipline, and shall be liable to punishment provided in these Regulations, if he is guilty of an offence which is punishable on conviction whether summary or on indictment.



## **Appendix Three**

### **The Police Discipline Code (1952)**

Any member of a police force commits any offence against discipline if he is guilty of-

1. **Discreditable conduct**- that is to say, if he acts in a disorderly manner or in any manner prejudicial to discipline or likely to bring discredit on the reputation of the force or the Police Service.

2. **Insubordinate or oppressive conduct**- that is to say, if he,

- (a) is insubordinate by word, act or demeanour, or
- (b) is guilty of oppressive or tyrannical conduct towards an inferior in rank or,
- (c) uses obscene, abusive or insulting language to another member of the force, or
- (d) wilfully or negligently makes any false complaint or statement against any member of the force, or
- (e) assaults any member of the force, or
- (f) overholds any complaint or report against any member of the force

3. **Disobedience to orders**- that is to say, if he disobeys or without good and sufficient cause omits or neglects to carry any lawful order, written or otherwise, or contravenes any requirement of the Third Schedule to the Police Regulations 1952.

4. **Neglect of Duty**-

- (a) neglects or without good and sufficient cause omits, promptly and diligently to attend or carry out anything which is his duty as a constable, or
- (b) idles or gossips while on duty, or
- (c) fails to work his beat in accordance with orders, or leaves his beat, point or other place of duty to which he has been ordered, without due permission or sufficient cause, or
- (d) by carelessness or neglect permits a prisoner to escape, or
- (e) fails, when knowing where any offender is to be found, to report the same, or to make due exertions for making him amenable to justice, or
- (f) fails to report any matter which it is his duty to report, or
- (g) fails to report anything which he knows concerning a criminal charge, or fails to disclose any evidence, which he or any person within his knowledge, can give for or against any prisoner or defendant to a criminal charge, or
- (h) omits to make any necessary entry in any official document or book, or
- (i) neglects or without good and sufficient cause omits, to carry out any instructions of a Medical Officer of the force, or while absent from duty on account of sickness is guilty of any act or conduct calculated to retard his return to duty.

5. **Falsehood and Prevarication**- that is to say, if he-

- (a) knowingly makes or signs any false statement in any official document or book, or
- (b) wilfully or negligently makes any false, misleading or inaccurate statement, or
- (c) without good and sufficient cause destroys or mutilates any official document or record, or alters or erases any entry therein.

**6. Breach of Confidence**- that is to say, if he

- (a) divulges any matter which it is his duty to keep secret, or
- (b) gives notice directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the lawful execution of such warrant or service of such summons, or
- (c) without proper authority communicates to the public press, or to any unauthorised person, any matter connected with the force, or
- (d) without proper authority shows to any person outside the force any book or written or printed document the property of the Police Authority, or
- (e) makes any anonymous communication to the Police Authority or Chief Officer of the Police, or any superior officer, or
- (f) canvasses any member of the Police Authority with regard to any matter concerning the force, or
- (g) signs or circulates any petition or statement with regard to any matter concerning the force, except through the proper channels of correspondence to the Chief Officer of the Police or the Police Authority, or in accordance with the constitution of the Police Federation, or
- (h) calls or attends any unauthorised meeting to discuss any matter concerning the force.

**(7) Corrupt Practice**- that is to say, if he

- (a) receives any bribe, or
- (b) fails to account for, or to make a prompt and true return of any money or property received by him in his official capacity, or
- (c) directly or indirectly solicits or receives any gratuity, present, subscription or testimonial of character, without the consent of the Chief Officer of Police or the Police Authority, or
- (d) places himself under a pecuniary obligation to any publican, beer retailer, spirit grocer or any person who holds a licence concerning the granting or renewal of which the police may have to report or give evidence, or
- (e) improperly uses his character or position as a member of the force for his private advantage, or
- (f) in his capacity as a member of the force writes, signs or gives without the sanction of the Chief Officer of Police, any testimonial of character or other recommendation with the object of obtaining employment for a person or of supporting an application for the grant of a licence of any kind, or
- (g) without the sanction of the Chief Officer of the Police supports an application for the grant of a licence of any kind.

**8. Unlawful or unnecessary Exercise of Authority**- that is to say, if he

- (a) without good and sufficient cause makes any unlawful or unnecessary arrest, or
- (b) uses any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty, or
- (c) is uncivil to any member of the public.

**9. Malingering**- that is to say , if he feigns or exaggerates any sickness or injury with a view to evading duty.

10. **Absence without Leave or being Late for Duty**- that is to say that he without reasonable excuse is absent without leave from, or is late for parade, Court, or any other duty.
11. **Uncleanness**- that is to say, if he while on duty is improperly dressed or is dirty or untidy in his person, clothing or accoutrements.
12. **Damage to Clothing or other Articles Supplied**- that is to say if he,  
(a) wilfully or by carelessness causes any waste, loss or damage to any article of clothing or accoutrement, or to any book, document or other property of the Police Authority, served out to him or used by him or entrusted to his care, or  
(b) fails to report any loss or damage as above, however caused.
13. **Drunkenness**- that is to say if, while he is on or off duty, is unfit for duty through drink.
14. **Drinking whilst on Duty or Soliciting Drink**- that is to say, if he,  
(a) without the consent of his superior officer, drinks or receives from any other person, any intoxicating liquor while he is on duty, or  
(b) demands or endeavours to persuade any other person to give him, or to purchase or obtain for him, any intoxicating liquor whilst he is on duty.
15. **Entering Licensed Premises Whilst on Duty**- that is to say, if he, enters while on duty any premises licensed under the liquor licensing laws , or any other premises where liquors are stored or distributed, when his presence there is not required in the execution of his duty.
16. **Lending, Borrowing and Accepting presents** - If he lends any money to any superior or borrows from or accepts any present from any inferior in rank
17. **Conviction for a Criminal Offence** - Any member of the police force also commits an offence against discipline, and shall be liable to punishment provided in these Regulations, if he is guilty of an offence which is punishable on conviction whether summary or on indictment.
18. **Being an Accessory to a discipline offence** - that is to say, if a member of a police force connives at or is knowingly an accessory to any offence against discipline.

## Appendix Four

### The Police Discipline Code (1984)

A member of the force commits an offence against discipline if he commits one or more of the following offences set out below:

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

**6. Improper Disclosure of Information:** which offence is committed where a member of a police force:

- (a) without proper authority communicates to any person, any information which he has in his possession as a member of a police force, or
- (b) makes any anonymous communication to any Police Authority, or
- (c) without proper authority makes representations to the police authority or the council of any county comprised in the police area with regard to any matter concerning the force, or
- (d) canvasses any member of that authority or of such a council with regard to any such matter.

**7. Corrupt or Improper Practice:** which offence is committed where a member of a police force-

- (a) in his capacity as a member of the force and without the offence of the chief officer of police or the police authority, directly or indirectly solicits or accepts any gratuity, present or subscription, or
- (b) places himself under pecuniary obligation to any person in such a manner as might effect his properly carrying out his duties as a member of the force, or
- (c) improperly uses, or attempts so to use his position as a member of the force for his private advantage, or
- (d) in his capacity as a member of the force and without the consent of the chief officer of police, writes, signs or gives any testimonial of character or other recommendation with the object of obtaining employment for any person or of supporting an application for the grant of a licence of any kind.

**8. Abuse of Authority:** which is committed where a member of a police force-

- (a) without good and sufficient cause makes an arrest, or
- (b) uses any unnecessary violence towards any prisoner or other person with whom he may be brought into contact in the execution of his duty, or
- (c) is uncivil to any member of the public.

**9. Racially Discriminatory Behaviour:** where an officer whilst he is on duty, on the grounds of a person colour, race, nationality or ethnic or national origins, either behaved towards that person in a manner which, even without these grounds, amounts to the commission of the disciplinary offence of abuse of authority, or otherwise treated him improperly.

**10. Neglect of Health:** which offence is committed where a member of a police force, without good and sufficient cause, neglects to carry out any instructions of a medical officer appointed by the police authority or whilst absent from duty on account of sickness, commits any acts or adopts any conduct calculated to retard his return to duty.

**11. Improper Dress or Untidiness:** which such offence is committed where without good and sufficient cause a member of a police force while on duty, or while off duty but wearing uniform in a public place, is improperly dressed or is untidy in his appearance.

**12. Damage to Police Property:** which offence is committed where a member of a police force;

- (a) wilfully or through lack of due care causes any waste, loss or damage to any police property, or

(b) fails to report as soon as reasonably practicable any loss or damage to any such property issued to or used by him or entrusted into his care.

**13. Drunkness:** which offence is committed where a member of a police force renders himself unfit through drink for duties which he is or will be required to perform or which he may reasonably foresee having to perform.

**14. Drinking on Duty or Soliciting Drink:** which offence is committed where a member of a police force while on duty-

(a) without proper authority, drinks, or receives from any other person, any intoxicating liquor, or

(b) demands or endeavours to persuade any other person to give him, or to purchase or obtain for him, any intoxicating liquor.

**15. Entering Licences Premises:** which offence is committed where a member of a police force:

(a) while on duty or

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

**16. Criminal Conduct:** which offence is committed where a member of a police force has been found guilty by a Court of law of a criminal offence.

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

## **Appendix Five**

### **Schedule 1 Regulation 4(1) The Police (Conduct) Regulations 1999**

#### **Code of Conduct.**

##### **Honesty and Integrity**

1. It is of paramount importance that the public has faith in the honesty and integrity of police officers. Officers should therefore be open and truthful in their dealings; avoid being improperly beholden to any person or institution, and discharge their duties with integrity.

##### **Fairness and Impartiality**

2. Police officers have a particular responsibility to act with fairness and impartiality in all their dealings with the public and their colleagues.

##### **Politeness and Tolerance**

3. Officers should treat members of the public and their colleagues with courtesy and respect, avoiding abusive or deriding attitudes of behaviour. In particular, officers must avoid favouritism of an individual or group; all forms of harassment, victimisation or unreasonable discrimination, and overbearing conduct to a colleague, particularly to one junior in rank or service.

##### **Use of Force and Abuse of Authority.**

4. Officers must never knowingly use more force than is reasonable, nor should they abuse their authority.

##### **Performance of duties**

5. Officers should be contentious and diligent in the performance of their duties. Otherwise should attend work promptly when rostered for duty. If absent through sickness or injury, they should avoid activities likely to retard their return to duty.

##### **Lawful Orders**

6. The Police Service is a disciplined body. Unless there is good and sufficient cause to do otherwise, officers must obey all lawful orders and abide by the provisions of the Police Regulations. Officers should support their colleagues in the execution of their lawful duties, and oppose any improper behaviour, reporting it where appropriate.

##### **Confidentiality**

7. Information which comes into the possession of the police should be treated as confidential. It should not be used for personal benefit and nor should it be divulged to other parties except

in the proper course of police duty. Similarly, officers should respect, as confidential, information about force policy and operations unless authorised to disclose it in the course of their duties.

### **Criminal Offences**

8. Officers must report any proceeding for a criminal offence taken against them. Conviction of a criminal offence may of itself result in further action being taken.

### **Property**

9. Officers ,must exercise reasonable care to prevent loss or damage to property (excluding their own personal property).

### **Sobriety**

10. Whilst on duty officers must be sober. Officers should not consume alcohol when on duty unless specifically authorised to do so or it has become necessary for the proper discharge of police duty.

### **Appearance**

11. Unless on duties which dictate otherwise, officers should always be well turned out, clean and tidy whilst on duty in uniform or in plain clothes.

### **General Conduct**

12. Whether on or off duty officers should not behave in a way which is likely to bring discredit upon the police service.



**Appendix Six**

**Complaints Against Police Proforma**

**Complaint reference No** \_\_\_\_\_

**Reported to the PCA? Ref. No** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Name** \_\_\_\_\_

**Address** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Telephone number** \_\_\_\_\_

**e-mail address** \_\_\_\_\_

**Date of birth** \_\_\_\_\_

**age** \_\_\_\_\_ **Male/Female**

**Your Race**

Black  White  Asian  White European   
Chinese/Japanese

**Was the incident in question motivated by your Race, Religion or Sexual orientation?** Yes/No/unsure

**Date of the incident** \_\_\_\_\_

**Time of incident** \_\_\_\_\_

**Place** \_\_\_\_\_

**What were the brief circumstances?** \_\_\_\_\_

\_\_\_\_\_

use rear of the form if necessary

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How many officers were involved? 1/2/3/4/5/6/7/8/more(\_\_\_\_\_)

What type of police officer(s)?  Uniform  Plain clothes

Details of the police officer(s)?  male  female

Officers Race

- Black  White  Asian  White European
- Chinese/Japanese

Shoulder number(s)? 1) \_\_\_\_\_ 2) \_\_\_\_\_ 3) \_\_\_\_\_  
4) \_\_\_\_\_ 5) \_\_\_\_\_ 6) \_\_\_\_\_

Other Identification \_\_\_\_\_

Force and Station to which attached. \_\_\_\_\_ / \_\_\_\_\_

Reason for the interaction. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- What is alleged against the officer:-
- Dishonesty, untruthfulness
  - Unfairness or Impartial
  - Impoliteness or intolerance
  - Use of Force
  - Abuse of Authority

Was any Injury incurred? Yes/no

- State Nature of injury.
- shock  slight  slap  bruise  cut
  - sexual  serious injury  death

Was a weapon used? Yes/no

What weapon or instrument was used?  Truncheon  Baton  Torch   
Spray  police dog  handcuffs  firearm  Other/state which

\_\_\_\_\_

Have you sought medical aid? Yes/no

Where were you treated? \_\_\_\_\_

Who treated you? \_\_\_\_\_

Were you seen by a police doctor? Yes/no

Have your injuries been documented? Yes/no

Have your injuries been photographed? Yes/no

Do you give permission for the investigating officer to have access to your  
medical record? Yes/no

Were you arrested? Yes/no

Were you charged or reported for an offence? Yes/no

What is your likely expectation?  just to tell a police supervisor  
 warning to officer  
 resolve a problem no official complaint  
 official complaint  
 discipline the officer

Were you seen by a supervisory officer? Yes/no

Have you suffered financially as a result of making a complaint? Yes/no

How much have you lost? £ \_\_\_\_\_

\_\_\_\_\_  
signed by complainant

\_\_\_\_\_  
date

**Resolved to the complete satisfaction of the complainant and not under duress.  
(You may be contacted at a later date to ask you how your complaint was resolved)**

\_\_\_\_\_  
**signed by complainant**

\_\_\_\_\_  
**date**

\_\_\_\_\_  
**Countersigned by reporting officer**

\_\_\_\_\_  
**date**

## **Appendix Seven**

### **The Liberty Model** **Independent Investigations and** **Improving Public Confidence.**

#### **An Overview**

##### **Essential criteria**

- **Independence** - that guarantees impartiality,
- **Effectiveness** - that ensures workability
- **Cost**- which is reasonable, efficient and structured.

##### **Where can a complaint be made**

- Made to an independent body (IB) called the Independent Police Complaints Commission (IPCC) through a third party like the Citizens Advice Bureau, Law centres and Local Government Offices.

##### **The role of the Independent Body (IPCC)**

- to investigate complaints against police
- must have control over the whole process
- must be able to decide what is a complaint
- must be able to decide how to handle complaints
- the discretion to decide who should investigate the matter
- to decide what matters to return to the police to investigate
- mandatory provision in place in what the IPCC must investigate e.g.. death, serious injury, serious abuse of power etc.
- power to commence and investigation even where no complaint has been made.
- power to review complaints when completed
- power to sample a selection of informally resolved complaints.
- to decide the outcome (whether to prosecute or take disciplinary action) of any matter without recourse to the Chief Officer of Police.
- once a decision has been reached to submit the papers to the Crown Prosecution Service (CPS)
- to decide whether an informal resolution is appropriate.
- to ensure that complaints investigations proceed prior to the conclusion of criminal proceedings unless there is good reason to do otherwise.

### **The make up of the IPCC -**

- Non police (civilian) personnel and police
- The non police (civilian) investigators to be drawn from Customs and Excise, Serious Fraud office, The Commission for Local Administration, Immigration, the Insurance industry, as well as solicitors and barristers.
- no more than 25% police officers seconded.
- All IPCC investigators to hold the office of constable to ensure power of arrest, unimpeded right of entry to police buildings and the power to ensure the preservation of evidence and production of evidence.

### **The role of the police**

- to maintain informal resolution
- to resolve minor matters quickly
- submit investigations back to the IPCC

### **Resources and Funding -**

To be adequately funded- cost of system unclear  
Self funding without recourse to any police budgets.  
£15 Million allows for 2000 cases to be investigated.  
Annual audited accounts to be produced

### **Jurisdiction -**

National (confined to England and Wales)  
The structure would be regional and overseen by Regional Directors.

### **Role of the Crown Prosecution Service.**

The decision to prosecute police officers undertaken by a separate section of the CPS.

### **Disciplinary Hearings -**

To be held in public unless there are exceptional circumstances.

**Appendix Eight**  
**The KPMG Model**  
**An Overview**

**Essential criteria**

- **Independence** - that guarantees impartiality,

**Name / Title -**

The new body to be named the Independent Agency for Complaints against Police (IACP).

**Structure -**

The IACP would have six regional offices and a central headquarters

**Funding/ Costs-**

Estimated at £14 million which would allow 1000 cases to be investigated each year.

**Role of the IACP -**

Independent investigations would be carried out by a team of lay investigators and seconded police officers.  
Complaints involving deaths in custody, fatal road traffic accidents and serious arrestable offences estimated to be around 1000 per year.  
Certain categories would be suitable for investigation by the IACP and sent directly to them for investigation  
The supervision of some complaints investigations carried out by police forces.  
The IACP to have the final say on the outcome of all complaint matters.  
Proactive investigations to be carried from regional centres.

**Role of the Police -**

The majority of complaints investigations would continue to be carried out by the police.  
To prepare papers on complaints investigations and recommendations for submission to the IACP for approval.

## **Appendix Nine**

### **The Police Ombudsman for Northern Ireland**

#### **An Overview**

##### **The Police Ombudsman's Aim**

The Police Ombudsman will provide an Independent, impartial, efficient and effective police complaints system which has the confidence of the people and the police.

##### **The Police Ombudsman's Mission**

To deliver to the people and police of Northern Ireland an independent and impartial police complaints system, based on human rights, which is effective and efficient. In particular we will:

- Tell the people and the police of Northern Ireland about how they can make a complaint and how the police complaints system works;
- be open and available to all those who want to make a complaint;
- tell the people and the police about the Police Ombudsman's powers;
- investigate complaints impartially and thoroughly;
- tell everyone involved about the progress and outcome of any complaint;
- call the Police Ombudsman in to investigate a matter where it is in the public interest to do so;
- recommend criminal and disciplinary proceedings where they are appropriate;
- carry out research and consultation to improve the quality and effectiveness of the Police Complaints System;
- carry out research and report on any trends, patterns and important matters that might arise in connection with the way police do their job; and
- contribute to improving the way the police deliver their service to the people of Northern Ireland.

##### **What does the Ombudsman do?**

- The Ombudsman deals with complaints about how the police behave when they are doing their job. Complaints may involve allegations of criminal



behaviour by a police officer, or by allegations that the police officer broke the police code of conduct.

- Even if you have not made a complaint, the Police Ombudsman can investigate a matter if she has reason to think that a police officer may have committed a criminal offence or broken the police code of conduct.
- If someone dies and the Chief Constable has reason to think that the death may have happened as a result of the behaviour of a police officer, he must refer the matter to the Police Ombudsman.
- If it appears to the Secretary of State, the Police Authority or the Chief Constable that a Police officer may have committed a criminal offence or broken the police code of conduct, they may refer the matter to the Police Ombudsman for her to investigate.
- When we receive a complaint, the Police Ombudsman will examine it and decide how to deal with it.

#### **Decides how to deal with Complaints.**

- If the Police Ombudsman thinks that the complaint is suitable for formal Resolution, and you agree with this, we will refer the matter to the police as soon as possible for them to deal with. If your complaint is of a minor nature, such as an allegation that a police officer was rude, we may be able to sort it out informally.
- If your complaint is not suitable for informal resolution, we will investigate it. If the complaint concerns an incident that has already been complained about and investigated, we will take this into account when we decide whether to investigate the matter further. When we investigate a criminal investigation, we will have the same legal powers as a police officer to search, arrest and hold suspects.
- If your complaint is about the service that the police provide in general, we will refer that matter to the Chief Constable.
- The Police Ombudsman also has the power to ask the police to investigate the case if she thinks it is right to do so.

#### **Decides the outcome of a complaint.**

The Police Ombudsman will decide what should happen to the complaint if any of the following happen.

- If the evidence shows that a police officer may have committed a crime, the Police Ombudsman will recommend to the Director of Public Prosecutions (the DPP) that they prosecute the officer.
- If the evidence shows that an police officer may have broken the police code of conduct, the Police Ombudsman will decide what disciplinary charges could be brought against the police officer and she will recommend disciplinary action.
- If for example there is no evidence to support your allegation, your complaint will not be investigated any further. The Police Ombudsman will give you her reasons for this decision.
- We will tell you and the police officer the result of your complaint as soon as possible.

### **Monitor Trends and patterns in complaints**

The Police Ombudsman also monitors complaints against the police and checks whether there are trends or patterns in police complaints. This includes identifying, for example, particular situations, equipment or even officers that are being complained about.

### **Report on our work.**

- We will help the Police Ombudsman to produce an Annual Report which will refer to the complaints she has dealt with during the previous year. She will not name any police officers, or people who have made complaints.
- The Police Ombudsman can write a report on anything she thinks the Secretary of State should know about, in the public interest.
- The Secretary of State can also ask the Police Ombudsman to carry out any necessary research and report on any matter.
- Any report that the Police Ombudsman makes to the secretary of State under this power must also go before Parliament and be published
- The Police Ombudsman will also send a copy of any report she makes to the Chief Constable and the Police Authority
- The Police Ombudsman will also supply the Police Authority with any statistics which she thinks it should receive.

### **What the police ombudsman cannot do.**

- Investigate an officers conduct that has already led to a criminal or disciplinary action, unless there is new evidence that was not available at the time of the original investigation
- Investigate complaints that are 'out of time' (See step 2).

### **There are nine steps to making a complaint.**

#### **Step 1 How to complain.**

- Call in at our office at New Cathedral Buildings, St. Anne's Square, 11 Church Street, Belfast BT1 1PG between 9am - 5pm Monday to Friday. You do not need to make an appointment.
- Write to the Police Ombudsman at the address given above.
- Call at your local Citizens Advice Bureau and they will tell you how to contact us.
- Call in at your local police station. They will not deal with your complaint, but they will refer it to us as soon as possible.
- Contact your solicitor, who can tell us about your complaint.
- Phone us on 0845 601 2931 or 028 9082 8600

#### **Step 2. How long you have to make a complaint**

- You must make your complaint to the Police Ombudsman within **One Year** of the incident you are concerned about.
- There is an exception to this - if the incident happened between 6th November 1998 and 5th November 1999, you have two years within which you must make your complaint.
- In special circumstances, the Police Ombudsman can investigate complaints about things that happened more than a year before they reported to her.
- These will be cases where:
  - there is new evidence which was not available before;
  - the matter is serious; and

- the Police Ombudsman decides that it is in the public interest to investigate the case.<sup>1</sup>

### **Step 3 - What the Police Ombudsman will do about your complaint.**

- We will arrange to meet you to take details of your complaint. We will try to arrange this somewhere private and convenient for you - at our office, your local Citizens Advice Bureau, and local hotel or some other suitable place.
- If you are a women who has suffered domestic violence and you want to complain about the police, we will meet you in a Womens Aid Refuge if you prefer.
- After the meeting we will decide how we will deal with your complaint.
- We will tell you the name of the person responsible for dealing with your complaint
- We will give you as much information as we can at every stage of the complaints system.
- We will give you a written report on our decision about your complaint.

### **Step 4 - Looking after you and the Police officer**

- We will treat you with respect and do all we can to make the process as simple and as quick as possible. However, some complaints are very complicated and may involve many other people, such as doctors and other witnesses. This may mean that your complaint could take some time to investigate.
- We will reply to your letters within three working days of receiving them.
- We will respect your human rights, and those of the police officer you have complained about.

### **Step 5 - Ways of dealing with your complaint**

- If the Police Ombudsman thinks that your complaint is suitable for informal resolution, and you agree with this, we will refer the matter to the police as

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<sup>1</sup> In step 2 with the exception of the first point the remainder are subject to further legislation which should become statute with the passing of the forthcoming Northern Ireland Police Bill in 2001

soon as possible for them to deal with. We will check how the police have dealt with your complaint.

- If your complaint is not suitable for Informal Resolution, we will investigate it and keep you informed about the case.
- The Police Ombudsman also has the power to ask the police to investigate the case if she thinks it is right to do so.

### **Step 6 - The Police Ombudsman's Decisions.**

When the complaint has been investigated, the Police Ombudsman may decide to do one of the following:

- Recommend to the Director of Public Prosecutions (the DPP) that the police officer should be prosecuted. It is up to the DPP to decide whether they will prosecute the officer.
- Recommend that the Chief Constable should bring disciplinary action against the officer involved. If the Police Ombudsman and the Chief Constable disagree about whether the police officer should be brought before a disciplinary hearing, the police ombudsman can insist that the Chief Constable does so.
- Recommend that disciplinary proceedings should be brought by the police authority if the officer you have complained about is an Assistant Chief Constable or Chief Constable.
- Award you compensation. Even if the Police Ombudsman awards you compensation, your solicitor will still tell you about other legal rights you may have.
- Reject your complaint, for example, because there is no evidence to support it. The Police Ombudsman will tell you her reasons for this decision.

### **Step 7 - If the police officer is prosecuted.**

If the police officer is prosecuted, the DPP will deal with the case. We will explain to you how this works.

### **Step 8 - Disciplinary proceedings.**

If the Police Ombudsman decides that an officer should face disciplinary action, we will explain this process to you.

**Step 9 - Telling you about what has happened to your complaint.**

After the investigation, we will tell you whether the police ombudsman has decided to recommend that the DPP, the Chief Constable or the Police Authority take any action. When all the necessary hearings have been held, we will tell you what the final outcome is.

**The Police Ombudsman's decision is final. However, if new information comes to light that you could not have reasonably known about, the Police Ombudsman may start a new investigation.**

## **Appendix Ten**

### **Complaints Against the Police - Framework for a new system (Consultation and discussion document)**

**December 2000**

#### **Objectives of the new complaints system**

- Increased public confidence and trust in the police and in the complaints system as a whole
- Increased accessibility, openness and independence
- quicker resolution of complaints
- Improved communications with complainants
- Improved collection, collation and reporting of data.

#### **A new Independent body**

There will be an independent body which will replace the Police Complaints Authority. This will be known as the Independent Police Complaints Commission (IPCC). It will have a more independent proactive role and build a system in which all sections of the community, and the police will have confidence.

#### **Definition of a complaint**

- The definition of complaint will be extended to include behaviour witnessed by a bystander
- covers regular police officers, special constables and civilian employee's.

It will have;

- increased access to the system
- complainants right to appeal to IPCC.

### **Scope of the new complaints system**

There will be an extension of the complaints procedure which not only includes regular officers but extends to Special Constables and Civilian personnel.

Senior officers above the rank of Superintendent also fall within the scope of the complaints procedure as there should be no difference providing the current arrangements and responsibilities of police authorities and chief officers are maintained.

### **Widening access to the complaints system**

The system requires greater access by prospective complainants. The public will be given a choice to make their complaints in a non threatening environment. The PCA, IPCC or Citizens Advice Bureaux will provide guidelines on how complaints can be made.

### **Recording a complaint**

The responsibility for formally recording a complaint will remain with the police authority in regards to Chief Officers and the chief officer in respect of all other ranks. There is a right of appeal to the IPCC in the event an appropriate authority refuses to record a complaint.

### **Direction and control**

Previously there has been no right to complain about how a force is directed or controlled, however a mechanism is needed for complaints regarding these aspects as part of or separate from the procedure for handling complaints against the police. (Several questions on this aspect still require answering)

### **Informal resolution as an alternative to full investigation**

Informal resolution allows for speedily resolving matters however there will be amendments to this process;

- the process will be retained except that it will be renamed 'local resolution'.



- will continue to be sued for allegations which, if proved, would not lead to criminal or disciplinary hearings. However where there are no prospects of obtaining the necessary evidence to substantiate complaints, the appropriate authority will be able to apply to the local IPCC for authority to use local resolution instead of formal investigation; and
- will be strengthened to provide a range of different approaches: management resolution, restorative conference and mediation.

The 'local resolution' process will be strengthened as follows;

- the IPCC will have the power to review how well the 'local resolution' is functioning and to ensure that officers are operating those processes in accordance with regulations and guidelines.
- the IPCC will have the powers to call for regular information from police forces on the use of the local resolution process and the outcomes in order to monitor and report on its use and to provide information and guidance for complainants;
- complainants will be given an explanation of how local resolution will work and what can reasonably be expected at the end of the complaints process;
- complainants will be given the right of appeal to the IPCC if they are unhappy about the way the process is used; and
- complainants will be asked to provide a written statement of their agreement to the 'local resolution'.

Local resolutions provides a fast, efficient and effective method of resolving complaints and we should aim to use this as much as possible. At present, about a third of all complaints are resolved locally without the need for formal investigation but there is scope to increase the numbers.

Where there is no prospect of obtaining the necessary evidence to substantiate the complaint it may not be worthwhile mounting a formal investigation. Instead, a Chief Officer or Police Authority can apply to the IPCC for authority to use local resolution. This must be done on a case by case basis setting out the reason for the application.

The local resolution process will provide a framework for the investigating officer and the complainant to agree the most appropriate approach from management resolution, restorative conference or mediation. Information on the process and its appropriate use will be available to complainants. To protect the complainants the police will provide;

- police would need the written agreement of complainants for the use of the process; and
- there should be a right of appeal to the new independent body if the complainants are unhappy about the way the system has been used or if the process is imposed - but not about the outcome where the system has been used properly.

The IPCC will be the guardian of the use of 'local resolution' by monitoring and audit. The IPCC will be expected to review how it functions and to ensure the processes are used in accordance with the regulations and guidance. The IPCC will have the powers to both gather and present information about police forces to the public.

### Investigations by the IPCC

The IPCC will;

- have referred to them any case falling into the specified categories, whether or not a complaint has been made, and will have the discretion to investigate or supervise;
- have the call in power to investigate or supervise other complaints at its discretion;
- have its own investigation teams independent from the police, made up of
  - ~ independent civilian investigation managers who will manage the teams on a day to day basis;
  - ~ seconded senior police investigators;
  - ~ remainder of the teams with suitable mixes of police and non police members to achieve the optimum in both performance and public confidence;

Initially, they will not have the powers of a constable as the seconded officers already have those powers. Additionally the Secretary of State will have the

power to bestow upon members of investigating teams the office of constable including other appropriate powers after consulting police organisations and the IPCC;

Chief Officers will have a legal obligation to:

- Produce and/or give access to the IPCC documents or other material as called for;
- allow members of the IPCC to take away documents or other material, or take copies; and
- allow entry to police premises.

The IPCC will have the discretion to investigate a matter in the public interest even though no complaint has been made. (This matter is still the subject of debate as the Government's view is that this should only occur when the Home Secretary decides). There is a selection of categories which are mandatorily referred to the IPCC. They will base their judgement on the seriousness of the incident, its importance for public confidence and the resources available at the time. These categories are proposed as follows;

- deaths in police care or custody
- fatal road traffic incidents in which a police vehicle is involved;
- shooting incidents in which a police officer discharges a firearm in the course of the operation;
- allegations of serious corruption involving police officers;
- miscarriages of justice resulting from misconduct by a police officer;
- allegations of racist conduct;
- serious arrestable offences allegedly committed by a police officer; and
- allegations of serious injury to a member of the public has been caused by a police officer.

The IPCC will also have the power and discretion to call in matters for independent investigation or supervision other complaints not falling within the specified categories.

### **Independent Investigation Teams**

The teams will comprise of a mix of police officers and non police officers. Each IPCC investigation team will be overseen by an Independent Commissioner and managed on a day to day basis by an independent civilian manager employed by the IPCC. Each team may have serving officers on it at the discretion of the Independent Commissioner.

### **Powers of the Independent Investigating Teams**

This matter is discussed earlier and is still open to debate regarding IPCC members having the powers associated with the office of constable.

### **Powers for the IPCC in relation to Complaints Investigated by the police**

In order for the IPCC to operate effectively and for it to be seen to be independent from the police, there will need to be a clear separation of powers and responsibilities.

- Chief officers or the Police Authority will be responsible for providing the complainant with a full written account of the outcome of a formal investigation into a complaint against a police officer;
- complainants have a right of appeal to the IPCC against a decision by the Chief Officer or Police Authority; and
- in dealing with an appeal from a complainant, the IPCC will undertake a comprehensive review of the case and should have the power to uphold the decision, advise or direct the Chief Officer or Police Authority to review the decision, call for a re-investigation, either supervised or not by the IPCC, or re-investigate the case itself.

The current situation does not allow for comments by the complainant on the outcome of the investigation. If the complainant raises objections there will be no power to reconsider the decision. The lack of any redress for the complainant undermines confidence in the system. The home force will still have a role in respect that they may;

- make the provisional decision about any action in relation to the conduct of the officers in the case;

- if necessary, meet the complainant or family and explain the results of the investigation;
- send a full written account of the investigation to the complainant setting out the way the investigation had been conducted, a summary of the evidence, the conclusions - including the proposed action taken to prevent a recurrence; and
- advise the complainant of their right of appeal to the IPCC against the provisional decision.

The issue of acknowledging fault and apportioning blame is raised in this part. To admit blame opens up issues of legal liability on the part of the police. (Views are invited on this aspect)

### **Discipline**

Additional powers are required by the IPCC who will be required to organise disciplinary hearings, provide presiding officers in complaints cases;

- the IPCC will have discretionary powers to present or observe cases it investigated by police, whether or not those cases were supervised;
- in disciplinary cases arising from a complaint, one of the three members of the panel to be independent of the police;
- as a consequence, Police Authorities to compile and maintain lists of independent people (excluding members of the police authority itself) eligible to sit on discipline panels;
- in attending a disciplinary hearing arising from a complaint to have the discretion to allow the complainant to be accompanied by up to three people of their choice;
- the presiding officer of the disciplinary hearing arising from a complaint to have the discretion to allow the complainant to be accompanied by more than three people if, in his/her opinion, the circumstances of the case justify it and there are no reasonable objections from the accused officer; and
- the presiding officer of the disciplinary hearing to have the discretion to exclude persons.

### **Presenting Disciplinary cases**

There will be changes to the proceedings which will make them more open and will occur without detriment to the charged officer. The evidence will be presented fully and robustly. Giving the IPCC the option to present or observe disciplinary cases would provide the police with a strong incentive to do just that.

### **Constitution of a disciplinary panel**

(Still under discussion)

### **Attendance at a disciplinary hearing**

The complainant may attend the hearing with up to three people if necessary however the presiding officer has the discretion to exclude people or to allow more than the statutory three people to attend.

### **Disciplinary hearings in public**

The subject of hearings being open to the public were discussed. There are powerful arguments on both sides with the police suggesting that perhaps at the serious end of the scale public access could be possible. (This is a subject for further discussion)

### **Openness**

The way complaints investigations are dealt with and information obtained in the course of that investigation, will be changed.

- the IPCC, Chief Officers and the Police Authorities, in their dealings with the complainant, should have the discretion to disclose information from the investigation of the complaints subject only to a harm test; and
- the IPCC should have the freedom to use information received from reports and other documents from police forces, after excluding sensitive or demonstrably confidential material, to compile guidance, promotional and other material for the purpose of continuous improvement in the complaints procedure and in raising the public's awareness and understanding of the

complaints procedure. It allows for unrestricted disclosure of investigating officers reports.

This is a subject where no consensus was reached and is subject of further discussion. A discretion is allowed as to what to produce however it may be in the public interest to retain some information although this hinders the principle of openness.

#### **Collection and use of information**

The IPCC will raise public awareness in respect of the complaints system. It will demonstrate the independence of the police. The IPCC will gather information and identify problem areas. It will promote best practice, remove weaknesses and develop a culture focused on the needs of the complainant.

This will be done by gathering information from reports, documents and inspections by the HMIC into forces performance in handling complaints.

#### **Civil cases against the police**

When a civil action against the police has been lost or settled the criminal and disciplinary aspects of the case will need to be reviewed. This may amount to ordering an investigation. The appropriate authority will notify the IPCC of all civil cases at the outset and the proposed action and has the power to supervise or call for an independent investigation according to the criteria used in the complaints cases.

#### **Role of the IPCC in regards to Criminal Proceedings**

The IPCC will be responsible for determining whether a case is submitted to the CPS for consideration and will have the power to submit it direct to the CPS.

#### **Location of IPCC offices**

The IPCC will have the same powers as the PCA and will subject to the consent of the Home Secretary be able to set up regional offices as they see fit. The decision to set up other offices will be based on a pragmatic assessment of the work loads.

**Appendix Eleven**  
**Letters from the PCA**



PETER W. MOORHOUSE  
*Deputy Chairman (Discipline)*  
Acting Chairman

Our Ref: MDD107

*Mr Peter Kennison MA*  
*9 Whadden Chase*  
*INGATESTONE*  
*Essex*  
*CM4 9HGF*

*2nd September 1996*

*Dear Mr Kennison*

*Thank you for your letter of the 26th August, I am grateful to you for your interest in subjects which we have highlighted in our Annual Report.*

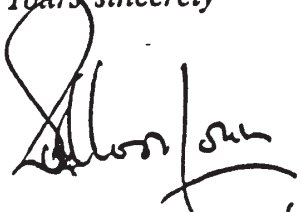
*The problem which I have at the moment is that the Authority are already co-operating with a study of deaths in custody with the Association of Police Surgeons and two Lancashire Constabulary officers who have obtained a Home Office grant to look at certain aspects related to the same subject. I have also, within the last two days, received an approach from an ACPO sub committee which would like to have access to our files on deaths in custody to analyse, admittedly a rather narrow and specialised area within that subject. From this you will be able to see that the subject of deaths in custody is a fairly well trodden field at the moment and over the next 12 to 18 months I would imagine a fair amount of work will be published.*

*There are, however, two other subjects which you may wish to consider, the first is the introduction, training and use of the new style batons which is currently attracting a certain amount of comment. The second subject is one which would interest this Authority to a considerable degree and that is, the position of minority ethnic communities within the complaints procedure. We have a limited amount of information within our database on this but do not ourselves have the resources to implement a study in depth.*

*Having put forward these two subjects I should issue a caveat in relation to the study of new batons - I am aware that one or two other bodies/individuals may be considering studies into this subject.*

*If either of the two alternatives which I have suggested to you are of interest please do not hesitate to contact me, but I think, with regret, I would have to say that the Authority is already well-committed in supporting studies into 'Deaths in Custody' and could not really justify supporting a further study.*

*Yours sincerely*

A handwritten signature in black ink, appearing to read 'P W Moorhouse', with a large loop at the start and a long horizontal stroke at the end.

**P W MOORHOUSE**  
*Acting Chairman*

# PCA

POLICE COMPLAINTS AUTHORITY

10 Great George Street  
London SW1P 3AE

Telephone 0171-273 6410

JOHN CARTWRIGHT  
*Deputy Chairman (Investigation)*

*Our Ref: MDD107*

Mr Peter Kennison MA  
9 Whadden Chases  
INGATESTONE  
Essex  
CM4 9HF

23 September 1996

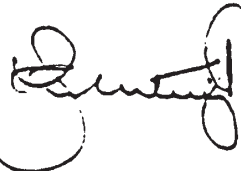
*Dear Mr Kennison,*

As Mr Moorhouse is currently away from the office I am replying on his behalf to your letter of 17 September.

I am particularly glad that you have decided to focus your research on the treatment of people from the ethnic minorities in the police complaints procedure since that was a subject which I had myself suggested. As far as I am aware there has been no published research in this area despite the obvious public interest.

Although the Authority is continually seeking ways of improving relationships with minority ethnic communities our annual public attitude surveys show a considerable level of mistrust of the whole police complaints procedure among these groups. Research in this area would therefore be a particular benefit to the Authority in addition to meeting a much wider public need.

Perhaps the best course would be for you to visit the Authority and to discuss how the project can be progressed. If you would like to telephone Mr Moorhouse's secretary on 0171.273.6443 we can fix a convenient date when both he and I will be available to meet you.

*Yours sincerely*  


JOHN CARTWRIGHT

*Pauline*      *24<sup>th</sup> 1996*  
*10 am*  
*MRS BARRS 6461*

# PCA

POLICE COMPLAINTS AUTHORITY

10 Great George Street  
London SW1P 3AE

*The independent body established by Act of Parliament  
to oversee public complaints against police officers*

Telephone 0171-273 6460

Mr Peter Kennison  
9 Whadden Close  
Ingatstone  
Essex  
CM4 9HF

*Your Reference*

*Our Reference*

*Date*

26 November 1996

Dear Mr Kennison

Following your visit to the PCA yesterday, I have enclosed, as discussed, the *Markers* procedure which will enable you to see the basic report by which our Markers are interrogated.

It is simply a *Complainant Profile* giving totals—by force—without any allusion to the complaint outcome, of those cases assigned our current Marker references (of which 'ethnic group' is, of course, only one). Clearly, this very basic interrogation is going to be too simplistic for your needs and, in order to try and facilitate your requirements, I need to know exactly the type of breakdown you want.

Perhaps, after an initial perusal of the enclosed, you could let me know your requirement more precisely and I will do what I can to help you further.

Yours sincerely



Ray Counter

JOHN CARTWRIGHT  
*Deputy Chairman (Investigation)*

JCC/MB

11 November 1996

Mr Peter Kennison  
9 Whadden Chase  
INGATESTONE, Essex  
CM4 9HF

*Dear Peter,*

Thank you for your letter of 6 November about your proposed research project.

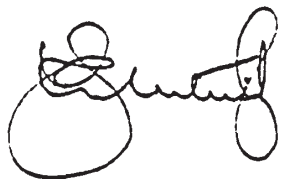
Having considered the various suggested titles, I would agree that No 1 expresses the problem clearly and concisely.

The ethnic monitoring of complaints is carried out by the force concerned when the complaint is recorded. It covers simply age, gender and ethnic origin and there is no other system in operation.

We will be happy to arrange for you to meet Ray Counter. Perhaps you would be kind enough to telephone my secretary on 0171-273 6461 so that the necessary details can be sorted out.

With best wishes.

*Yours sincerely*



JOHN CARTWRIGHT

*for. Mum 25/11*

# PCA

POLICE COMPLAINTS AUTHORITY

10 Great George Street  
London SW1P 3AE

Telephone 071-273 6110

JOHN CARTWRIGHT  
*Deputy Chairman (Investigation)*

JCC/MB

29 January 1997

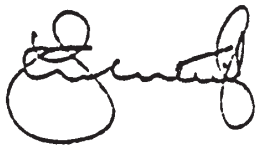
Mr Peter Kennison  
9 Whadden Chase  
INGATESTONE, Essex  
CM4 9HF

*Dear Peter,*

Thank you for your letter of 27 January updating me on the progress of your research project.

I am glad to see that this is moving forward and I shall be very happy to discuss it in more detail when you have been able to take account of Professor Lea's comments.

*Yours sincerely*



JOHN CARTWRIGHT

JOHN CARTWRIGHT  
*Deputy Chairman (Investigation)*

JCC/MB

29 April 1997

Mr Peter Kennison  
9 Whadden Chase  
INGATESTONE, Essex  
CM4 9HF

*Dear Mr Kennison,*

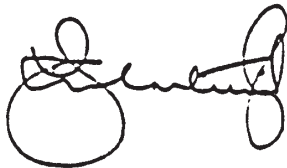
Thank you for your letter of 26 April arising from our discussion about your research project.

We could provide information on most of the issues raised in your questions 1 to 12 but a good deal of work would be involved and I am not entirely clear about the way in which you need the figures to be presented. Perhaps the best course would be for you to come in and discuss it directly with Ray Counter.

As I mentioned when we met, the Authority can no longer afford to undertake public attitude surveys so that the most recent year for which information is available is 1995/96.

With regard to your outstanding question, the Authority has agreements with six non-Home Office forces. These are detailed in our annual report. Complaints involving these forces are dealt with in exactly the same way as for Home Office forces.

*Yours sincerely,*



JOHN CARTWRIGHT

cc Mr Counter

# PCA

POLICE COMPLAINTS AUTHORITY

10 Great George Street  
London SW1P 3AE

Telephone 0171-273 6410

JOHN CARTWRIGHT  
*Deputy Chairman (Investigation)*

JCC/MB

3 October 1997

Mr Peter Kennison  
9 Whadden Chase  
INGATESTONE, Essex  
CM4 9HF

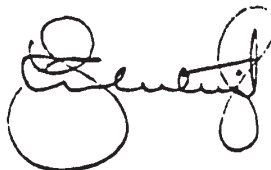
*Dear Peter,*

Thank you for your letter of 1 October and for the copy of the pamphlet on Stop and Search in North London.

I shall certainly read this with great interest.

With best wishes.

*Yours sincerely*



JOHN CARTWRIGHT



JOHN CARTWRIGHT  
*Deputy Chairman (Investigation)*

JCC/MB

23 September 1997

Mr Peter Kennison  
9 Whadden Chase  
INGATESTONE, Essex  
CM4 9HF

*Dear Mr Kennison,*

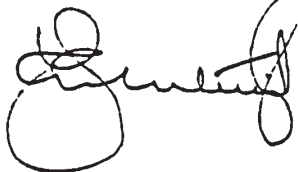
I must apologise for the delay in replying to your letter of 13 September but Mr Counter is currently away from the office and it is difficult to know when he may be able to provide the data you requested.

I am, however, asking our public relations officer to let you have relevant data from the Public Attitude Surveys carried out on behalf of the Authority in the hope that this may be of assistance.

The comments on Stop and Search were particularly interesting - particularly as our references in the 1997 Annual Report have drawn critical comment from the Metropolitan Police Service.

With best wishes.

*Yours sincerely*



JOHN CARTWRIGHT

# PCA

POLICE COMPLAINTS AUTHORITY

10 Great George Street  
London SW1P 3AE

*The independent body established by Act of Parliament to oversee  
complaints by members of the public against police officers*

Telephone 0171-273 6460

Mr P Kennison M.A.  
9 Whadden Close  
Ingatestone  
Essex  
CM4 9HF

*Your Reference*

*Our Reference PK/RC/003*

*Date 05 December 1997*

Dear Mr Kennison

Following your further letter dated 25 November and our subsequent telephone conversation earlier this week, I think I now have everything ready to answer your further points.

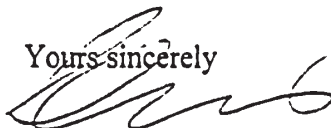
Firstly, you recall you asked for Marker's reports covering one year's statistics. Since our reporting year actually runs from 1 April, the best I can do in this respect is to provide reports based on statistics from 01/04/97 to 30/11/97 (the last complete month for which statistics are available). Although I appreciate this is not a complete year, I hope it does provide most of the information you require and, perhaps, a basis on which the complete year's figures can be extrapolated.

Concerning the description of complaint 'categories', I asked someone here to do a bit of research into the source of the enclosed Annex II, which is used by our caseworkers as the general guidelines for classification purposes. The cover page of her response is also enclosed for your information. I'm sure you will appreciate, however, that we can only classify complaints with reference to the information contained in the complaint file and, as such, it must ultimately lie with interpretation based on the facts available to us.

At the time of writing, I have not yet had an opportunity to speak to Richard Offer so I don't know if you have been able to contact him concerning the information he said he would provide. Just to remind you, therefore, Richard's direct line phone number is 0171 273-6483.

I do hope the information supplied proves useful to you in the completion of your project. If there is anything else you feel we might be able to provide in future, please get in touch. In the meantime, however, I suppose all that remains is for me to wish you the very best in the preparation of your thesis.

Yours sincerely



Ray Counter



HOME OFFICE - Research and Statistics Directorate  
Queen Anne's Gate London SW1H 9AT

Direct line 0171-273 2047  
Switchboard 0171-273 3000

Mr Peter Kennison  
School of Social Science  
Middlesex University  
Queensway  
Enfield  
Middlesex  
EN3 4SF

Your reference:

Our reference:

Date: 26 January 1998

Dear Mr Kennison

I am writing in response to your letter of 19 January 1998, addressed to Mr Povey and passed to me for attention. I can provide the figures you request from 1993 only and these are enclosed.

In response to your query about table 7, note (2) of that table explains. The Metropolitan Police Service could only provide a complete breakdown of their data from 1994 onwards. The first three columns in table 7 do not include figures for the Metropolitan Police Service, the remaining three columns do include their figures.

I trust this information is sufficient for your requirements.

Yours sincerely

Judith Cotton  
Crime and Criminal Justice Unit

1993 PFA	Commendations, letters of appreciation etc (excludes Metropolitan Police Service)			
	The Courts	Members of the public	Other outside sources	Total external sources
Avon and Somerset	14	1,618	5	1,637
Bedfordshire	0	472	0	472
Cambridgeshire	3	695	153	851
Cheshire	3	612	474	1,089
Cleveland	38	303	15	356
Cumbria	0	743	0	743
Derbyshire	38	934	66	1,038
Devon and Cornwall	20	1,622	178	1,820
Dorset	11	713	512	1,236
Durham	18	413	517	948
Essex	23	2,725	0	2,748
Gloucestershire	9	734	141	884
Greater Manchester	14	1,720	620	2,354
Hampshire	10	1,195	673	1,878
Hertfordshire	1	845	66	912
Humberside	20	673	245	938
Kent	4	2,216	410	2,630
Lancashire	10	976	318	1,304
Leicestershire	4	758	124	886
Lincolnshire	7	360	267	634
City Of London	7	84	162	253
Merseyside	0	634	399	1,033
Norfolk	8	1,249	0	1,257
Northamptonshire	3	342	188	533
Northumbria	38	815	281	1,134
North Yorkshire	17	448	309	774
Nottinghamshire	13	1,296	3	1,312
South Yorkshire	29	813	159	1,001
Staffordshire	6	1,452	0	1,458
Suffolk	9	962	95	1,066
Surrey	14	1,315	1	1,330
Sussex	13	1,475	466	1,954
Thames Valley	23	1,979	768	2,770
Warwickshire	0	704	0	704
West Mercia	4	1,574	230	1,808
West Midlands	0	2,468	0	2,468
West Yorkshire	45	2,115	14	2,174
Wiltshire	14	604	386	1,004
Dyfed-Powys	8	355	268	631
Gwent	3	254	250	507
North Wales	6	652	304	962
South Wales	56	1,008	80	1,144
<b>Total</b>	<b>563</b>	<b>42925</b>	<b>9147</b>	<b>52,635</b>

Four forces - no breakdown available

JOHN CARTWRIGHT  
*Deputy Chairman*

JCC/MB

10 June 1998

Mr Peter Kennison  
School of Social Science  
Middlesex University  
Queensway  
ENFIELD, Middx  
EN3 4SF

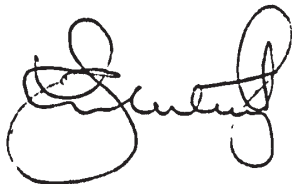
*Dear Mr Kennison,*

Thank you for your letter received on 5 June. I must apologise for the delay in responding to your original letter of 20 April but I have been deeply involved in the production of the Authority's Annual Report for 1997/98 and have also been away on two weeks' annual leave.

I found the early chapters of your document an interesting introduction to the complaints system with some striking historical references although there were a number of inaccuracies on pages 33 and 46 and some sweeping generalisations on page 47.

The research findings are well presented but I did not feel that they led to any clear conclusion - perhaps because of the statistical limitations to which you refer. I am relieved to know that you propose to move on to a consideration of the ethnic issue since that is, as you know, one of our major concerns.

*Yours sincerely*



JOHN CARTWRIGHT

## Appendix Twelve

Kennison, P. (2000) "Being Realistic about Stop and Search" in After Macpherson : Policing after the Stephen Lawrence Inquiry. Alan Marlow and Barry Loveday (eds), Russell House Publishing, Lyme Regis.

**BEST COPY**

**AVAILABLE**

Poor text in the original  
thesis.

Some text bound close to  
the spine.

Some images distorted

**DAMAGED  
TEXT  
IN  
ORIGINAL**



*After*  
**MACPHERSON**

**Policing after the Stephen Lawrence Inquiry**

Edited by Alan Marlow and Barry Loveday



Russell House Publishing

AFTER MACPHERSON: Policing after the Stephen Lawrence Inquiry

Edited by Alan Marlow and Barry Loveday



1-6



15 >

## Being Realistic about Stop and Search

Peter Kennison

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### Introduction

This chapter looks at the impact of stops and search exercised under the Police and Criminal Evidence Act 1984, (PACE). It analyses evidence from research data taken from various national surveys and victim studies and against this backdrop considers the relationship between the public and the police. The study reviews issues of disproportionate victimisation, public dissatisfaction and complaints against police arising not only from indiscriminate use of stop and search but also police behaviour generally. It seeks to show how police discipline and complaints bring into focus the issue of control and accountability of the police. The key theme of the chapter shows that the 'litmus test' of equality in policing is the issue of stop and search. The dysfunctional effects, when compared to the proportion of minorities in the population, indicate to police managers the impact of stop and search powers. Additionally, the damaging effects of disproportionate use of stop and search which, when coupled with under use of the complaints process tends to put a 'stopper in the bottle' of fermenting discontent. The chapter concludes by stressing the need for change in stop and search and complaints policies by outlining constructive proposals which would help to increase public confidence, perceived legitimacy and respect for the police.

### What is Stop and Search?

People are generally aware that the police have a legitimate right to stop and search them should the need arise, although these powers are considered personal, intrusive and potentially frightening. The police consider the use of stop and search as an essential element in the fight against crime, (Fitzgerald, 1999: iii). Against this, civil libertarians question the effectiveness of these powers, which authorise an officer at street level to confront, question and interrogate before deciding whether to detain, arrest or prosecute. Furthermore, the high level decisions on policing

strategies, like stop and search, arouse the greatest public anxiety especially when they concern control of the streets, demonstrations and other operations which have more to do with public order rather than fighting crime. Fitzgerald and Sibbet expressed the importance of stop and search by stating:

*Of the three main aspects of policing covered by the ethnic monitoring requirement of 1996, the question of stops and search has attracted the greatest interest: from the police, politicians, the media and community groups alike.*

(Fitzgerald and Sibbet, 1996)

The Lawrence Inquiry report specifically referred to the issue of stop and search in these words:

*If there was one area of complaint which was universal it was the issue of stop and search. Nobody in ethnic minority communities believes that the complex arguments which are sometimes used to explain figures of stop and search are valid.*

(Macpherson, 1999: p 312)

Prior to the introduction of PACE there was no general or universal police power which authorised police officers to stop people or vehicles for the purpose of searching and seizing property. There was, however, stop and search legislation relating specifically to drugs and firearms. Traditionally, stop and search was a local phenomenon, managed, regulated and controlled at station level where it was seen not only as a means to fight crime, but also as a method to gather intelligence, aid detection and clear up offences. These ad hoc powers lacked managerial influence and control, resulting in policing styles that targeted certain areas which for civil libertarians added to the general perception that the police were not accountable to the public. Neither was there accountability upwards regarding this matter. Before 1986, stop and search statistics were not collated by chief officers in their annual reports to the Home Secretary for example. Profound dissatisfaction with policing styles, not least regarding stop and search, like *Swamp 81* in Brixton, London in 1981, became the catalyst for rioting and disorder.

Until 1984, stop and search powers varied nationally according to geographical locale. In London, for example, these powers derived from the Metropolitan Police Act 1839. In the counties, some police forces relied on local council regulations or by-laws. These ad hoc powers were often unclear. If an offence had been suspected the police officer would often resort to arresting the suspect, which may have involved the use of 'sus' in order that a search could be carried out. 'sus' was the offence of being a suspected person or reputed thief being in or on any highway etc. with intent to commit a felony contrary to Sec. 4 Vagrancy Act 1824. The historical tradition of stop and search had more to do with control of the streets, often being used for order maintenance rather than fighting crime.

It was against this background that the Royal Commission, (1981), considered police powers and criminal procedure and this set the agenda for much of the Police and Criminal Evidence Act, (Leishman, 1996: p 43). PACE attempted to put right some of the civil libertarian concerns in respect of police accountability as these concerns gathered momentum between the mid 1950s and the early 1980s. Kinsey et al., (1986), identified two key transitional periods. The first, between 1955 and 1975 was a period in their eyes characterised by a crisis of effectiveness in the police fight against crime. The second, from 1975 onwards they referred to as the 'hyper-crisis': the result of ineffective policing methods, and the unrealistic expectations that the police alone could tackle the problems of a range of serious crimes, particularly in inner city areas. These problems appear rooted in police re-organisations in 1964, the unit beat policing strategy, technological advancement, stop and search tactics and the notion of fire brigade policing methods involving a fast response to incidents and 999 calls.

PACE defined the rights of citizens who were stopped and searched by the police, or detained at police stations. These rights included fixed procedures relating to interviewing, searching of premises and access to legal representation. The legislation contained the explicit intention of reducing levels of police discretion on the streets, by issuing a 'code of practice' (Sec 66) which tightly defined and interpreted meanings, assumptions and rules. These rules meant that any breach of PACE 'codes of practice' could be dealt with not only according to law but also, and for the first time, against police discipline, (Sec 67). This dual liability intentionally placed constraints on the police in an effort to win back

public approval, promote satisfaction and enhance public legitimacy. The codes are amended at periodical intervals without recourse to further legislation.

On an operational level the police were unprepared for such a drastic change in legislation since training support for street level practitioners, certainly as far as the Metropolitan Police were concerned, was insufficient and inadequate, though it represented perhaps the most important change to policing since 1829. Even today there is concern within the senior levels of the police that many street level officers and detectives are unaware or have insufficient knowledge of large sections of PACE. During the Lawrence Inquiry one senior detective appeared not to recognise 'a basic tenet of criminal law' relating to reasonable grounds for suspicion, (Macpherson, 1999: pp 107-108). This said, the legislation is not easy and appears complex, intricate, and difficult to understand. Add to this a lack of training and practical understanding, and it may in part answer the criticism in explaining the high numbers of civil actions being conducted annually by dissatisfied complainants.

### The Test of Reason In Stop and Search Practice

When the legislation for PACE was put together following extensive public consultation, care was taken to avoid such difficult matters as random searches, stereotyping and embarrassment of suspects in the wording of the Act. Civil libertarian concerns highlighted the need for reasonable explanations to be given by the police to those being stopped and searched. It was deemed reasonable for an officer to be in a position to provide six pieces of information. These are:

1. The officer's name.
2. The name of the station to which he is attached.
3. The object of the search.
4. The grounds of the search.
5. If not in uniform he must show his warrant card.
6. The entitlement, within one year, to a written record of the search.

Legislators ensured that the 'codes of practice' provided both sufficient guidance and warning to practitioners thus:

*It is important to ensure that powers of stop and search are used responsibly and sparingly and only when reasonable grounds for suspicion genuinely exist. Over use of the powers is likely to be as harmful to police effort in the long term as misuse; both can lead to mistrust of the police among sections of the community. It is also particularly important that any person searched is treated courteously and considerately if police action is not to be resented.*

(Codes of Practice, 1985: p 13-14)

On the issue of stereotyping, the 'codes of practice' provides further warning:

*A person's colour of itself can never be reasonable grounds for suspicion. The mere fact alone that a person is carrying a particular kind of property or is dressed in a certain way or has a certain hairstyle is likewise not in itself sufficient.*

(Ibid.: p 20)

There is evidence to suggest that police have failed to heed this advice. Mistrust of the police is widespread amongst the young, unemployed and socially excluded. Furthermore the brunt of stop and search policy has led to the alienation and marginalisation of the minority ethnic community, (Young, 1994; Mooney and Young, in this volume).

The code of practice says that:

*Where an officer has reasonable grounds for suspicion necessary to exercise the power of stop and search he may detain the person concerned for the purpose of and with a view to searching him. There is no power to stop or detain a person against his will in order to find grounds for a search.*

(Codes of Practice, 1985: p 14)

The term 'reasonable suspicion' has attracted critical comment not only because of its abstract nature but because its application relies heavily on discretion.

### *Reasonable suspicion*

The codes of practice define the term 'reasonable grounds for suspicion' as 'not requiring certainty nor satisfaction beyond doubt but that there must be some concrete basis for the suspicion'. Mere suspicion was no longer enough for stopping people; decisions needed to be grounded in terms of objective facts respecting whether his or her action appears reasonable, (Polyvios, 1983). Civil libertarians regarded the term 'reasonable suspicion/grounds' in its traditional formulation with English law as too imprecise, (Brogden, 1985), whilst orthodox liberals viewed the powers enshrined within PACE as unworkable,

too vague, unnecessary and as harmful to more important policing objectives. A review of stop and search practices in 1995 by Haringey Community and Police Consultative Group, in association with the National Association for the Care and Resettlement of Offenders, (NACRO), and the Metropolitan Police, entitled *The Tottenham Experiment*, recommended that the term 'reasonable suspicion' should be re-defined and clarified to make it more positive.

Young, (1994), identifies three methods the police may use when determining suspicion, as 'stereotypical', 'democratic' and 'information led' suspicion. He argues that stereotypical focusing leads to low yields of information for the police because it alienates the very people who possess information about crime. Democratic suspicion suspects every person, group, sub group equally. Young, (1994), and Fitzgerald and Sibbett, (1997), concur that both methods are unfeasible and illogical although the latter authors recognise the police could not do their job without being selective in their suspicions. Mooney and Young, (1999), argue instead for suspicion to be determined by hard evidence (information led), which in their view would reduce the chances of public alienation and increase the flow of crime information, (Young, 1994).

The use of discretion during a stop and search may be a pretext for some other reason, illegally gathering information or intelligence or preventing a crime. For example, a known serious offender may be stopped on several occasions by uniform officers as part of a strategy of surveillance by plain clothes crime squads to gather as much information about the suspect as possible, or as an officer told McConville and Shepherd:

*Right, let's get to know him; he's at it, whatever I'll stop him if I can and see what he's doing, see what he's about.*

(McConville and Shepherd, 1992: p 156)

This statement tends to suggest that this use of discretion is arbitrary and not grounded in reasonable suspicion, a policy which may in some cases verge on harassment of the suspect at one level and organisational police deviance at another. Fitzgerald, (1999: iv-v), acknowledges 3 patterns of police stop and search activity, if they produce results. These patterns focus on targeting certain known individuals who have a higher likelihood of arrest, a so-called fishing trip, a measure of performance and as a means of proactively dealing with local crime and disorder problems. Fitzgerald further suggested that in some cases, a stop may lead to a search where

circumstances had deteriorated as the encounter had become more confrontational. This implies that in some cases where due deference and respect has not been paid to an officer by the suspect or where suspects are particularly difficult, that 'failing the attitude test' as some officers call it may bolster arrest statistics, (Mooney and Young, 1999). It appears that misuse of discretionary powers in stop and search practice where suspicion ends in arrest may absolve police because the ends justify the means.

Lustgarten's, (1986), view of discretion is at variance with this notion, and he adds:

*...where the exercise of discretion is possible, for the most part this is in the direction of lenience. The police choose not to exercise their powers fully in many situations and they may prefer to deal with matters informally for two main reasons. One is to avoid unnecessary conflict with the public, thereby investing in improved community relations in the context of their responsibility for keeping the Queens Peace. The other, more self interested incentive is to keep bureaucratic demands to a minimum, especially if officers think the eventual outcome will contribute little to meeting either their own personal objectives or those of the force.*

(Lustgarten, 1986: p 95)

From the perspective of police culture this suggests two types of officer, as Reiner, (1997), makes clear; the first officer is 'the law enforcer' seen as proactive, resourceful and reckless whilst the other is 'the peace keeper, active, cautious and watches his back', (Reiner, 1997: p 1019). Both types of officer use discretion in differing ways, suggesting that this is a complex phenomenon and difficult to gauge. Mis-use of discretion and reasonable suspicion when bound together in stop and search practice present problems relating to high individual moral standards and the exercise of good judgement, essential elements for membership of the police service.

The rhetoric and understanding of 'stop and search' procedures show the use of the power is elaborate, complex and problematic.

### Stop and Search Powers, Ethnicity and Public Dissatisfaction

In recent years the question of race has emerged as one of the critical issues in debates about crime and policing. Some critics argue that black communities are over-policed and that this attention results in the over representation of black people in crime data. To others high crime figures represent a black crime wave.

The issues of stereotyping, targeting and discrimination were raised at the Lawrence Inquiry, not only regarding stop and search practice but also in regard to police practice generally. The crux of the problem is what can be done in the event of justified public dissatisfaction? Public dissatisfaction with the police is dealt with through PACE and the police complaints system. Not surprisingly, the Lawrence Inquiry was told unequivocally that there was little confidence in the present system amongst minority ethnic communities. They found that the lack of confidence adversely affects the atmosphere in which racist incidents and crimes are addressed and that the importance of public disquiet must not be underestimated, (Macpherson, 1999: p 315). Lack of confidence in the complaints process leads to small numbers of complaints and ever growing public dissatisfaction, which in turn leads to alienation and calls for greater control of the police. This is often marked in times of crisis for the police with either the introduction of a Royal Commission or the implementation of regulating legislation like The Police Acts 1964, 1967, 1976, the Police and Criminal Evidence Act 1984, the Police and Magistrates Courts Act 1994 and the Police Act 1999. Each piece of legislation has tended to follow scandals or causes célèbres that have attempted to constrain and regulate police practice with a view to even greater external influence and control.

### Substantiation

The police complaints system is an important indicator of public feeling towards the police and is a significant balance in the accountability of police. One of the major problems which has beset the complaints system is the apparent lack of credence it shows to public complaints. This is reflected in the very low numbers of public complaints upheld or substantiated. The legacy of low substantiation rates is a fact which has cast a shadow over the system since the Police Act 1976 established the Police Complaints Board (PCB); an independent element to complaints scrutiny. Complaints against police are a serious matter and low substantiation rates only fuel the argument that public redress through the complaint process is often futile.

A number of research studies have considered the element of substantiation. One such study of ethnic minorities and police complaints by Stevens and Willis for the Home Office in 1981

concentrated on the Metropolitan Police over a period from 1970–1979. They found that complaints against the police rose by 60 per cent, or 80 per cent if one considers that each complainant often made more than one complaint, in that time, even though the population within the Metropolitan Police District (MPD), declined during this period. More black and Asian complainants alleged assault in police custody than did white complainants, and this was as true at the beginning of the sample as it was at the end. Black and Asian complainants made more complaints per person and usually more than one complaint at a time. The age range for complainants was 15–24 years showing 28 per 10,000 population for black and Asian complainants, compared with 5 out of 10,000 for white complainants. On the basis of these statistics, a black or Asian complainant, aged 15–24 years old, with a criminal record, reported for an offence, alleging an assault whilst in police custody would have virtually no chance of substantiating the complaint.

Furthermore, the PSI report also found an ethnic disparity of its survey of Londoners in 1981. West Indians stated that they were less likely to make a complaint against police if they had a grievance, 79 per cent compared to 90 per cent of whites and 88 per cent of Asians.

Recent complaints' data drawn from PCA Annual Reports, (1994/7), indicate that black and Asian complaints account for between 16–18 per cent of all complaints handled by them. The Home Affairs Committee minutes of evidence, relating to the Police Complaints Authority dated 13th December, 1995, recognised that some, '18 per cent of complaints dealt with by the Authority came from members of minority ethnic communities', (Home Office, 1995: p 3). However, only 2.3 per cent of all complaints made to police were substantiated in 1996–7, (Home Office Statistical Bulletin, 21/97). The PCA regularly objects that this comment is misleading since it takes no account of the complaints which are withdrawn, informally resolved or dispensed with. They add that over recent years roughly one in four cases that are fully investigated has led to disciplinary action of some sort being taken against officers.

Low substantiation rates undermine public confidence in the police and the process itself. It follows that an ethnic disparity in rates also understates the differences in grievances. A lack of confidence in the complaints system causes dissatisfied people to either seek redress

elsewhere or to take no action whatsoever. Both of these courses undermine not only the whole complaint process but also the legitimacy of the police. The extreme of this of course leads to the withdrawal of consent to policing.

### *Dissatisfaction and stops*

Dissatisfaction at police stop and search tactics has been evident since the early 1980s. The PSI report, (1983), found that black people were more likely to be stopped than whites and officers frequently had no reasonable suspicion for stopping suspects. The British Crime Survey, (BCS, 1993), data also confirmed black over representation when it revealed that there were six black searches for every white subject. The Metropolitan Police Service, (MPS), statistics for the same year revealed a lower ratio of 4:1.

Young, (1994), emphasises that there are ever increasing numbers of stop and search being carried out and that often they are grounded in prejudice and irrationality which is disproportionately weighted against young, working class, male and black people. He states further that:

*To stop 1 in 10 of the black population and, indeed over one in two black males is an extraordinary degree of discriminate focusing which has no justification in terms of prevalence of likely offenders.*

(Young, 1994: p 73)

A study of the Police Complaints system was undertaken by Maguire and Corbett with the co-operation of the Police Complaints Authority, (PCA), which highlighted a lack of confidence in the complaints process. They added that these questions drew:

*...negative answers from significantly higher proportions of black and ethnic minority respondents than of white respondents.*

(Maguire and Corbett, 1991: p 130)

A recent Home Office report entitled *Statistics on Race and the Criminal Justice System*, (1998), show that black people are five times more likely to be stopped and searched than whites. The PCA expressed concern regarding stop and search complaints in 1995, 1996 and 1997. When the PCA produced its 1996 annual report they specifically focused on stops and searches, especially those which resulted in a complaint. They argued that:

*Complaints resulting from the use of stop and search powers amounted to 13 per cent of all cases considered*

during the year. This was a fall of two per cent compared to 1994-5. However, the proportion of these complaints which were made by black people rose from 22 to 29 per cent. Stop and search accounted for a quarter of all cases involving black complainants.

(PCA, 1996)

The PCA analysis showed that the Metropolitan Police accounted for 51 per cent of all these stop and search cases during the year, or, put another way, 79 per cent of all stop and search complaints originated from black and Asian people. The indication here is that whilst complaints made by white people resulting from stop and search are on the decrease, there was a significant rise in black and Asian complainants.

Research appears to show that membership of minority ethnic groups attracts suspiciousness and young males are likely to attract most police attention. What determines over representation of stop and searches has more to do with who becomes a target, when this happens and what influences bring about their selection. Pre-determined perceptions or stereotypes that locate crime within the black community will inevitably mean that police attention is focused on many more innocent black people than guilty, and a greater proportion of black people will be targeted compared to whites. Suspicion, reinforced by intelligence, may, in this context, provide a legitimate cloak for harassment, (Fitzgerald and Sibbett, 1997). Confidence and satisfaction in the complaints process appears low and the time is ripe for taking a more proactive stance in respect of complaints against police so that the public are aware that when things go wrong, the police take these matters more seriously.

The following section considers the levels of contact that exist between police and public drawn from the Finsbury Park Crime Survey, (1994). Comparisons will also be made with findings from the 2nd Islington Crime Survey, (2ICS, 1990), Hammersmith and Fulham Crime Survey, (HFCS, 1988), the West Kensington Crime Survey, (WKCS, 1989), Police Complaints Authority Public Opinion Survey, (PCAOS, 1996), and Police Complaints Authority data.

### The Finsbury Park Crime Survey (1994)

The survey was designed to obtain information regarding a wide range of factors which not only included criminal matters but also about other areas of concern and interest, police behaviour and public satisfaction levels. The survey

questions asked for details of victims, offenders, the time and place of the incident, its impact, and its reporting and/or non-recording. Its purpose was to relate victimisation to factors that included age, race, gender, place of residence and so on. Consideration was given to the impact of victimisation on both attitudes and behaviour.

The survey sought to address two areas of concern, namely: the fear of victimisation in relation to the actual extent of crime and the response of the police, their behaviour towards victims of crime and other members of the public who come into contact with police. Furthermore, and perhaps more importantly, the survey also considered the attitudes of victims and the public towards the police.

### Contacts

This survey explored rates of contact whether voluntary or otherwise, between members of the public and police. Results showed that there were 11 types of police/public contact, they were split into two categories: public initiated contacts and police initiated contacts. Public choice and police selectivity separated the two types of contact. The results of the analysis included proportionality between white and black respondents.

### Complaints

Respondents were asked whether they were seriously dissatisfied with police behaviour, whether this had occurred within the last three years and if a complaint against police had been made. It was necessary to use the word 'seriously' simply to exclude those more 'trivial' or 'incidental matters' from the database. In so doing the results of general public dissatisfaction would be lower and perhaps fairer. Only those who answered yes to the question were permitted to answer the next three questions, although all respondents were asked the general questions on complaints procedures.

It was felt essential to try to count those who declined to complain even though seriously dissatisfied with police behaviour. Their reasons for not doing so were noted. This would give an insight into the figure of hidden complaints and levels of public dissatisfaction and confidence in the police. The figures for not complaining were taken as a percentage of those who were seriously dissatisfied with police behaviour.

### Public initiated contacts

There are four types of public initiated contact. These are:

- a personal call to a police station
- approaching a police officer in the street
- making a 999 call
- reporting an incident to police

### Police initiated contacts

On analysis there are seven types of police initiated contacts. These are:

- police calling at the home
- home searched by police
- stopped by police in street
- stopped in occupied car
- taken or detained by police
- searched occupied car
- stopped and searched in street

When compiled, collated and analysed the picture of overall contact with police could be examined. The analysis broke down contact levels into their ethnic groups in order to consider minority ethnic group representation. For this survey, the term white meant white European and the term black refers to black Caribbean, black African, black other, Pakistani and Indian.

## Findings

### Contacts with police

Black respondents were 50 per cent less likely than white respondents to contact the police of their own volition. Put another way white people appear to make twice as many contacts with police than members of the black community. In contrast, black people were more likely to be stopped in the street and three times more likely to be searched, and if stopped in a car three times more likely to be searched than white people. No proportional difference was found between blacks and whites reactively contacted by police with results weighted to house calls for arrests.

### Complaints against police

30 per cent of respondents, 29 per cent white and 39 per cent black, were seriously dissatisfied with police behaviour with about a half of the respondents, 52 per cent white and 69 per cent

black, indicating that the dissatisfaction occurred within the last three years. Only 16 per cent of dissatisfied respondents complained about that behaviour with two thirds, or 68 per cent, comprising 68 per cent white and 65 per cent black, wishing not to make a complaint on the grounds that complaining would have no effect.

Exactly eight per cent would not complain on the grounds that the police investigate themselves and these results reflect a lack of confidence in this procedure. Some nine per cent, eight per cent white and 13 per cent black, said they were afraid of either complaining or reprisals. Ethnic dissatisfaction was too small to count in respect of the other variables. About 28 per cent white and 26 per cent black, were aware of the new complaints procedure implemented in April, 1985. Some 72 per cent of respondents, 65 per cent white and 76.5 per cent black, were unaware of the new system of complaints. Seven per cent of respondents, six per cent white and 13.5 per cent black, had either used the new system themselves or a family member or acquaintance had done so. Some nine per cent felt that the procedures had improved the system of complaints although 38 per cent white and 53 per cent black, felt it was much the same, with roughly two per cent white and 0.5 per cent black, stating it was worse. Exactly half of the respondents, 52 per cent white and 35 per cent black, did not know if matters had been improved or had got worse.

Four sets of data were compared. Two sets have been drawn from surveys commissioned by the Centre for Criminology, Middlesex University and relate to victim surveys conducted locally in Hammersmith and Fulham, (1988), and West Kensington Estate, (1989). The remaining two sets of data were commissioned by the PCA in 1996 as part of a national attitude survey, with a booster sample drawn from ethnic minorities.

When the Hammersmith and Fulham and West Kensington Surveys were compared, the results showed that 79 per cent would complain in the event that there was any form of police behaviour which dissatisfied them. This represents, certainly as far as intention is concerned, a significant vote of confidence in the police complaints procedures. Roughly 15 per cent claimed they would not complain while about seven per cent did not know. When asked what body they would report any complaint to, an average of 17 per cent replied that they would report their grievance to Scotland Yard, while roughly 75 per cent would complain to a senior



officer at the local police station. 48 per cent of respondents considered complaining directly to the PCA, the second largest response. Ten per cent of complainants wished to report their complaint to either their local councillor, their Member of Parliament, 13 per cent, the Home Secretary, five per cent, or a lawyer, 13 per cent. These results are consistent across all the surveys.

The main PCA sponsored survey reflected the responses from 2,000 people and the booster survey highlighted a sample number of 430 people drawn from ethnic minorities.

The PCA survey showed that 40 per cent of men and 35 per cent of women, and 35 per cent of men and 33 per cent of women drawn from ethnic minorities, would complain at a local police station. Some 12 per cent of respondents would complain to the PCA and four per cent in the case of ethnic minorities. There was a high proportion, 22 per cent, of people in the main survey and 36 per cent from ethnic minorities who did not know where they would complain. This represents the second highest response. Eight per cent of the main survey and eight per cent of the ethnic minority sample would write to the police, 18 per cent, 12 per cent of ethnic minorities, would contact a chief constable, 12 per cent, 5 per cent in the case of ethnic minorities, would contact a Member of Parliament while 11 per cent, 13 per cent in the case of ethnic minorities, would contact a solicitor.

The results indicate confidence by all respondents that they would complain at a police station in the event of dissatisfaction. This confidence is not reflected when actual behaviour is compared to intention, as some members of the public decline to complain whatever dissatisfaction against police behaviour there may be. A high proportion of people, particularly from ethnic minorities, were unsure of their response in such a situation. Furthermore, ethnic minorities were more likely to contact a lawyer/solicitor than their white counterparts.

### *Discussion*

Public dissatisfaction through interaction with police was investigated. The analysis showed a great reluctance on the part of black people to contact police of their own accord. There was a slightly higher incidence of black people to white being stopped by police, but once they were stopped, they stood three times more chance of being searched compared to their white

counterparts. Furthermore, if travelling in a car white people were a third less likely to be stopped than black people. However, if black are travelling in a vehicle the incidence of being searched stood at three times the rate for white people.

Using national statistics there does appear to be an over-representation of black people amongst complaints. Nationally, the black and Asian group represent six per cent of the population, but in the PCA complaints data they represent, on average, 17 per cent of all complaints dealt with by that body. From this perspective these figures appear to indicate an over-representation of nearly three times the national average for recorded complaints.

The analysis considered a number of independent surveys that reviewed complaints against police and was able to compare this data against public dissatisfaction revealing a high level of public dissatisfaction with police generally, 29 per cent of white people and 39 per cent black. Dissatisfaction levels with police behaviour appear to be increasing with nearly one third of white people and two fifths of black people being seriously dissatisfied with police. Proportionally, a third more black people were dissatisfied with police behaviour than people from the white community. Some two thirds of black people and half of white people stated that their dissatisfaction arose over the last three years. However, only a small number of people who were seriously dissatisfied made a complaint, with 16 per cent of complaints being made over three years for both ethnic groups.

A high proportion of both blacks and whites, two thirds in both cases, indicated that making complaint would have no effect. Black people were less confident in the complaints process with just over half of them stating that the new complaints system had not improved matters.

Only a very small section of the public knew about the improved procedures and half had no knowledge of them whatsoever. Twice as many black people had either used or had a friend or acquaintance who had used the new complaint process. Only 10 per cent of black people indicated that improvements had been made and therefore had confidence in the new system.

### *Conclusion*

The research has found a significant lack of confidence in the complaints system not only from white complainants but more particularly

from aggrieved members of the black community. Very high numbers of complaints originate from proactive use of stop and search powers. Mooney and Young, (1999), highlight the increasing numbers of stop and search activities being carried out and point to growing levels of dissatisfaction and alienation. When members of the public feel upset or dissatisfied with police behaviour or they resent being stopped, their choice of redress is limited. Aggrieved members of the black community tend to resort to civil redress rather than complain, as many of them are reluctant to contact the police, let alone make a complaint about police behaviour. Clearly what lies at the heart of this matter is police attitudes and a stereotypical assumption that roots crime in the black community. McConville and Shepherd emphasise this point thus:

*Complaints related to harassment of black people, unjustified stopping, searching and arresting and much less frequently brutality towards black people. Overlaying all of these comments was a persistent complaint about attitude of officers.*

(McConville and Shepherd, 1992: p 173)

The *Tottenham Experiment*, (1997), report showed a drop of 52 per cent in stops and searches and a reduction in arrests from those stops of 45 per cent. This meant that raising the profile and importance of stops and searches during any encounter had benefits because it required officers to be more individually accountable. This process required the police to justify and explain themselves more comprehensively than before and to provide people with information about their rights; in essence to have higher levels of discretion and suspicion before stopping someone. Previously, stops and search were unimportant, attracted little attention and could be done expeditiously. However, with the increased accountability, it follows that time implications occur resulting in fewer stops and a decline in arrest rates. Perhaps in this case quality prevailed over quantity?

High numbers of complaints attract comment and criticism. Even more positively, feedback regarding numbers and the types of complaint could prove invaluable for police managers responsible for supervision. It is also not necessarily the high profile complaints that cause the problems but the much higher volume of low-level matters that are not investigated or dealt with seriously, which can upset public opinion.

The police organisation is a performance culture, a factor which largely came about as a result of the Financial Management Initiative

(FMI) in 1982, Home Office Circular 114/83 and the Police and Magistrates' Courts Act 1994. The legacy of these measures require objective setting, devising and applying indicators and measuring inputs and outputs relative to those objectives. Some indicators include the counting of complaints and stop and search data. However, some have argued that the models of objective setting are inappropriate to the policing function, (Waddington, 1986), and measures of performance may actually conflict with the application of police work because of the need to produce 'figures'. The PSI report underscored this assumption but for opposite reasons, by stating that:

*...it is believed that figures are a bad criterion of performance and that the use of such a criterion leads to unnecessary or unjustified arrests and stops.*

(Smith and Gray, 1985: pp 344-345)

It is strongly suggested that stop and search statistics are removed from the list of performance indicators for all police forces, not only at the level of the individual officer but also at station and force level. The Metropolitan Police placed a bar on counting stops and search as an indicator of performance in 1997. A more robust system of recording stops and searches should be implemented, which fairly and accurately provides a true picture. Additionally, some internal monitoring and further questioning research may also be necessary. This will remove the pressure on police officers to achieve quotas and produce quality rather than quantity.

There is a low success rate for stops and search within the Metropolitan Police which currently stands at 12 per cent, (Fitzgerald, 1999). The national figure is much lower. On the one hand civil libertarian concerns focus on the high numbers of innocent people who were not arrested and who may be dissatisfied, whilst on the other there is some evidence to suggest that not all arrests originating from stops and search are properly counted. This may also contribute to the low measure of success. What lies at the heart of this matter is the strict control, management and supervision of discretion, recording and monitoring of stop and search where improvements may only come about with enhanced education and training at all levels of the police organisation.

Complaints against police should also be removed as an indicator of performance. In doing so, this would allow for a more transparent and honest reporting system which as far as complaints are concerned would end the police

obsession for number crunching. Whilst the police should not canvas for complaints, there should be a more appropriate internal police policy on 'resented stops' which allows for positive action so that they may be tackled quickly and robustly. Furthermore, a complainant should feel that their complaint is being taken seriously and that all complainants should be kept regularly informed of developments and not done in the ad hoc way as at present; in essence the whole system should be customer driven. True levels of public dissatisfaction are far from congruent with the number of complaints.

The issues of stop and search are clearly enjoined with public dissatisfaction and complaints. The Finsbury Park Survey established that stop and search is the litmus test of equality in policing and its frequency of use, and when compared to the proportion of minorities in the population allows some means by which police managers may assess its impact. The pernicious effects of the disproportionate use of stop and search, together with a lack of confidence in the complaints system are mutually compounding and magnify genuine resentment to the police amongst minorities. The police rely on inaccurate complaint statistics as a measure of performance, so by removing the barriers and obstacles to complaining, it may encourage more complaints, turning a negative input into a positive outcome. In this way they may win back some of the lost confidence and legitimacy in the police organisation. In summary, the ideal solution to policing by consent is, as Lea and Young suggest:

*The accountable police force will be one that is trusted by the community, and, of course, this accountability must include a 'monitoring' element: an effective complaints procedure involving the public and the visitation of swift justice on officers who commit illegal acts. A force trusted by the community will be one which the community will be prepared to yield a high flow of information concerning crime.*

(Lea and Young, 1993: p 260)

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(Lea and Young, 1993: p 21)

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