

# Managing Allegations Concerning Black and Asian Police Officers, Cultural Competence and Reflective Practice under the Police (Conduct) Regulations 2020

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The Police (Conduct) Regulations 2020 were introduced in the aftermath of serious findings by the National Police Chiefs Council (NPCC) that many police supervisors are uncomfortable dealing with low-level misconduct allegations concerning Black, Asian and Minority Ethnic (BAME) officers. A key component of the new regulations is the use of reflective practice as a way of managing low-level breaches of professional standards. We argue that there is little in the regulations to ensure that police supervisors can reach a threshold of cultural competency to oversee the new processes authentically. Furthermore, we fear that police misconduct data in coming years may indicate significant improvements in rates of misconduct and disproportionalities when the reality is that many issues are being shunted downward to more informal environments where little effort is made to gather and analyse data. Racial and ethnic disproportionalities may become even harder to identify and address as a result.

## INTRODUCTION

For most of the last 20 years, some of the biggest police forces in England and Wales were aware that their Black, Asian and Minority Ethnic (BAME) officers were more likely to be referred to formal disciplinary proceedings for internal conduct matters than their white officers (almost twice as likely in some force areas).<sup>1</sup> Internal conduct matters, in this sense, are different to civilian complaints about police officers and staff in that they describe issues, concerns and complaints raised by police officers, staff or other officials involved in judicial proceedings. Police forces tend to label these as ‘conduct matters’ and record them separately to expressions of dissatisfaction made by or on behalf of a member of the public, which are typically labelled as ‘complaints’. Analyses of the

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1 NPCC, ‘Understanding Disproportionality in Police Complaint and Misconduct Cases for BAME Police Officers and Staff’ (National Police Chiefs Council, 2019) 5–6 at <https://www.npcc.police.uk/documents/NPCC%20Understanding%20Disproportionality%20in%20Police%20Complaint%20Misconduct%20Cases%20for%20BAME%20Police%20Officers%20and%20Staff%202019.pdf> (all URLs last visited 22 November 2022). We have misgivings about using the term BAME but it is commonly used in police-related research for the period under review, and we feel that other nomenclature embedded in popular and legal discourse, such as ‘people of African descent’ are similarly indistinct – the constituent populations are incredibly diverse/ heterogeneous.

handling of civilian complaints, by comparison, tend to show much less disproportionality on the grounds of race or ethnicity of police officers complained about.<sup>2</sup> Police forces have long been aware of perceptions of discrimination within their misconduct processes. BAME officers expressed concerns in conversations with staff associations and in anonymous interviews with journalists<sup>3</sup> and extensive studies firmly established the presence of systemic disproportionality in various police forces.<sup>4</sup>

Quantifiable differences between the aggregates of a given population and a sub-group, which is what we mean by disproportionality, are not inherently problematic. Some degree of disproportionality, at various points in time, is inevitable. We would not expect human populations and sub-groups, however defined, to act uniformly or consistently over time except by the broadest measures. There may be acceptable differences explicable by data and demography. The over-representation of BAME officers in internal conduct matters found in the various studies, however, was of a different order. Data and respondents pointed to unacceptable differences precipitated by biases within people, cultures and systems.

Although some studies indicated that both BAME police officers and staff members were disproportionately subjected to disciplinary-related investigations, the focus of almost all the published reviews were police officers. This is partly because of the police officers' unique role and the fact that civilian personnel are subject to a range of separate policies and contracts that tend to differ on a force-by-force basis, making comparisons difficult. Significant disproportionality was found in several urban forces responsible for policing large cities, which tend to have larger proportions of BAME officers (although still well below their respective civilian populations). The London Metropolitan Police Service (MPS), West Midlands Police (WMP) and Greater Manchester Police (GMP), for example, are among the minority of forces that account for the majority of BAME police officers in England and Wales.<sup>5</sup> Smith et al analysed datasets provided by the MPS, WMP and GMP, covering the period 2007/08 to 2010/11, and found extensive levels of disproportionality on the grounds of ethnicity in internally raised misconduct proceedings.<sup>6</sup> In the WMP, for example, 13.2 per cent of internal misconduct investigations concerned ethnic

2 *ibid*; Graham Smith, Harry Hagger Johnson and Chris Roberts, 'Disproportionality in Police Professional Standards' (Greater Manchester Police, 2012) 31–39 at <https://www.escholar.manchester.ac.uk/api/datastream?publicationPid=uk-ac-man-scw:170650&datastreamId=FULL-TEXT.PDF>.

3 Rahila Bano, 'Asian officers criticise force' (BBC Asian Network, 2003) at <http://news.bbc.co.uk/1/hi/england/manchester/3054417.stm>; Smith et al, n 2 above.

4 Tarique Ghaffur, 'Thematic review of race and diversity in the metropolitan police service' (Metropolitan Police Service, 2004) in Smith et al, n 2 above, 19; HMIC, 'Disproportionate use of police powers' (Her Majesty's Inspectorate of Constabulary, 2015) at <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/peel-police-legitimacy-2015.pdf>.

5 Home Office, 'Police Workforce, England and Wales, 31 March 2019' (Cabinet Office, 2019) 26 at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/831726/police-workforce-mar19-hosb1119.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831726/police-workforce-mar19-hosb1119.pdf).

6 Smith et al, n 2 above; Graham Smith, Harry Hagger Johnson and Chris Roberts, 'Ethnic minority police officers and disproportionality in misconduct proceedings' (2015) 25 *Policing and Society* 561.

minority officers, who comprised only 7.7 per cent of the officer population at the time, making them almost twice as likely to be subjected to investigation compared to white officers.<sup>7</sup> Police officers of Asian descent were slightly more likely to be subject to an investigation (2.08 more times for Asian officers and 1.64 more times for black officers). In one year, allegations of corruption were 5.3 times higher for BAME officers than for white officers (on the basis of allegations received per 1,000 officers). Following a review of 41 police forces across a three-month period in early 2019, similar issues were discovered at a national level by the National Police Chiefs Council (NPCC), albeit at slightly lower levels. The NPCC research, known colloquially as the Cain Report after its lead author, found that BAME officers were subject to 10 per cent of internal conduct proceedings even though only seven per cent of officers identified as being from a BAME background.<sup>8</sup>

To understand the context and possible causes of the disparities, various studies undertook reviews of the reports of investigative officers, minutes of meetings, and training materials, as well as carrying out surveys, focus groups and interviews with BAME officers, investigators and staff associations. A thread that emerged in the seminal report by Smith et al in 2012 – and was reflected in other analyses – was that investigators and BAME officers who had been subject to misconduct proceedings placed a significant amount of blame on first line supervisors for referring low-level internal accusations or concerns for formal investigation. Many respondents stated that supervisors, who were predominantly white, showed preference to white officers by frequently dealing with low-level breaches of the Standards of Professional Behaviour informally, in what were described as face-to-face ‘corridor conversations’, whereas low-level issues concerning BAME officers would often be referred to professional standards departments (PSDs) for formal investigation.<sup>9</sup> Even when BAME officers admitted that their behaviour had fallen just below acceptable standards, they reported being referred by their supervisors to PSDs.

The majority of supervisors interviewed by the NPCC in 2019 accepted that this finding accurately reflected the situation. Supervisors described a fear of making mistakes or being labelled ignorant or racist for not knowing about a specific cultural matter and potentially facing a career-ending tribunal if they said or did something insensitive. When asked by the NPCC researchers: ‘Do you believe you and your supervisor colleagues have the cultural awareness and competence to effectively manage and support BAME colleagues?’, the ‘overwhelming response’ from supervisors was ‘no’.<sup>10</sup> This fear, or acknowledged lack of cultural competence, experienced predominantly by white supervisors was traced back, by the supervisors themselves, to the late 1990s and early 2000s, when the screening of the ‘Secret Policeman’ television programme, the publication of the Macpherson report and various signal misconduct cases brought the issue of institutional racism firmly into the public domain.<sup>11</sup> To avoid

<sup>7</sup> *ibid*, 565.

<sup>8</sup> NPCC, n 1 above, 38.

<sup>9</sup> *ibid*, 33.

<sup>10</sup> *ibid*.

<sup>11</sup> See also Smith et al, n 2 above, 5.

potential missteps when confronting or raising an allegation with BAME officers, and any subsequent accusations of cultural insensitivity, they saw fit to offload the risk to specialised complaints departments. The NPCC described this as a ‘move the problem’ rather than ‘deal with the problem’ culture.<sup>12</sup> Describing it as ‘systematic’ or ‘institutional’ racism might arguably have been equally appropriate since the respondents detailed a pattern of behaviour that amounted to unfair treatment of individuals on the basis of race. Smith et al had earlier concluded that the underlying approaches, fears and biases had ultimately ‘contaminated’ professional standards practice.<sup>13</sup>

Partly in response to these findings, in 2020 the Home Office introduced a number of new processes to encourage supervisors to stop referring minor cases for formal investigation, and to take responsibility and deal with relevant issues themselves at the managerial level at the earliest opportunity. In particular, new methods of reflective practice were introduced as the cornerstone of a new ‘culture of empowerment’ pursuant to the Police (Conduct) Regulations 2020, and associated reforms in the Police (Performance) Regulations 2020; the Police (Complaints and Misconduct) Regulations 2020; and the Police Appeals Tribunal Rules 2020.<sup>14</sup> We will argue, however, that the new processes may do little other than make the issue of disproportionality less visible and potentially more potent. Although the new regulations mean that police officers are less likely to be subjected to misconduct proceedings (which will reduce associated stress and mental health-related problems), BAME officers may continue to be treated differently, and discriminated against, by their police colleagues and supervisors. The same drivers behind supervisors’ initial preference for referring BAME officers to formal misconduct processes, including purported discomfort and apprehension about allegations of racism, may plausibly steer them towards similarly dysfunctional and discriminatory outcomes, including avoiding taking responsibility in the first instance. We argue that appropriate safeguards have not been introduced to prevent old and new forms of procedural disproportionality and racial bias from occurring and manifesting.

## THE MISCONDUCT REGULATIONS 2020 AND PRACTICE REQUIRING IMPROVEMENT

Two major changes were introduced by the new regulations. First, the regulations raised the threshold for referring cases of alleged misconduct to formal disciplinary processes. Previously, the formal threshold for ‘misconduct’ was described as ‘any breach of the Standards of Professional Behaviour’.<sup>15</sup> The new regulations changed this definition significantly to: ‘a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action’.<sup>16</sup> In other words, many varieties of low-level breaches are no longer to be treated

12 NPCC, n 1 above, 5.

13 Smith et al, n 6 above, 571.

14 SI 2020/4, SI 2020/3, SI 2020/2 and SI 2020/1 respectively.

15 Police Reform Act 2002, Schedule 3, para 29.

16 The Police (Complaints and Misconduct) Regulations 2020, s 1(2).

as misconduct and should be dealt with informally at the lowest appropriate managerial level; only the most serious cases should be treated as misconduct. Home Office Guidance issued alongside the new regulations explained that the new threshold of seriousness for misconduct referred to those cases where, if proven, ‘learning alone would not be sufficient given the gravity or seriousness of the matter which therefore warrants a formal sanction’.<sup>17</sup> Misconduct, if proven, should justify in the very least a written warning, which should be thought of as ‘a significant sanction and one that necessarily has an impact on the professional record of a police officer and should, as such, be taken seriously as a meaningful sanction’.<sup>18</sup> Any breaches of the Standards of Professional Behaviour that previously, if proven, would typically have resulted in a lesser sanction such as management advice were no longer serious enough to be treated as misconduct. The change amounted to a considerable transformation of the police misconduct system in England and Wales, to essentially exclude a majority of cases and behaviour-types that had previously been treated as and understood to be ‘misconduct’.

The second major change introduced by the new regulations was the establishment of a new terminology and process for dealing with those behaviours that breached the Standards of Professional Behaviour but fell short of the new threshold of seriousness required for misconduct. Behaviours that fall short of the new threshold are to be known as ‘Practice Requiring Improvement’ (PRI). The new label is formally defined as ‘underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the Code of Ethics’.<sup>19</sup> It must be noted, however, that this definition appears to capture more varieties of behaviour, beyond those previously considered to amount to a breach of the Standards of Professional Behaviour (the previous definition of misconduct). The ‘expectations of the public and the police service’ arguably represents a much lower threshold. The Code of Ethics also contains several values and principles in addition to those set out in the Standards of Professional Behaviour. Moreover, a separate regime already exists for unsatisfactory performance, known as the Unsatisfactory Performance Procedures (UPP). The UPP system should be used, for example, to address an inability or failure of a police officer to perform the duties of the role or rank they are currently undertaking to a satisfactory standard or level (including conduct such as continuously showing up late for duties or submitting shoddy paperwork). The new threshold for PRI therefore creates conceptual overlaps between low-level breaches of the Standards of Professional Behaviour, UPP processes and some formulation of public expectations. The Home Office Guidance makes little attempt to provide clarity around this, stating that issues badged as Practice Requiring Improvement ‘are potentially a blend of performance and conduct issues’.<sup>20</sup>

17 Home Office, ‘Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing’ (Cabinet Office, 2020) para 4.36 at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/863820/Home\\_Office\\_Statutory\\_Guidance\\_0502.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863820/Home_Office_Statutory_Guidance_0502.pdf).

18 *ibid*, para 4.35.

19 Home Office, n 17 above, para 4.44.

20 *ibid*, para 4.48.

Arguably, the new threshold and definition complicates matters for police officers and first line supervisors rather than bringing clarification.

In the context of this conceptual fudge, the Home Office set out new processes that should be followed when handling behaviours labelled as PRI. Where line managers identify or are made aware of a possible PRI they are expected to handle the matter locally as part of their normal line management duties. This should involve discussions with the person whose practice requires improvement and the application of the principles of 'reflective practice', and any learning points should be recorded and reflected in the officer's Personal Development Record (PDR).<sup>21</sup> However, reflective practice is not defined in the new regulations or associated Home Office Guidance; only a formal process that involves the formal review of reflective practice is outlined (known as the Reflective Practice Review Process). From an academic standpoint, 'reflective practice' is a term often used to describe the process of thinking about new ideas and experiences (including situational factors and individual behaviours) by relating them to existing knowledge and previous experiences and considering what worked well and what could have gone better. The aims of reflective practice usually include the generation of new knowledge, strategies, and perspectives about the impact of human factors, systems, structural implications, cultural norms, and power imbalances to aid decision-making, and to challenge beliefs and understanding in order to correct mistakes.<sup>22</sup> Feelings of doubt or the presence of uncertainty or confusion in a situation is often a trigger for this kind of reflection, largely because people are instinctively motivated to derive some level of understanding from confusing and complex situations (however biased or rudimentary their understanding might be).

The idea of reflection is certainly not new to policing.<sup>23</sup> Police officers, like doctors and lawyers, are expected to think on their feet to assess the circumstances of unfamiliar or unpredictable situations, identify problems and deliberate upon actions and the College of Policing has developed a National Decision Model for this purpose.<sup>24</sup> Reflection while a situation is still unfolding is known as 'reflecting *in* action', whereas the act of reflecting once it has already taken place is referred to as 'reflecting *on* action'.<sup>25</sup> The former is thought to happen instinctively or automatically in practical situations without much or

21 *ibid*, para 13.24.

22 Donald A. Schon, *The Reflective Practitioner: How Professionals Think in Action* (New York: Basic Books, 1983); Graham Gibbs, *Learning by Doing: A guide to teaching and learning methods* (Oxford: Further Education Unit, 1988).

23 Selina Copley, *Reflective Practice for Policing Students* (Thousand Oaks, CA: Sage, 2011); Steve Christopher, 'The Police Service Can Be a Critical Reflective Practice ... If It Wants' 9 *Policing* 326; Kristjan Kristjansson, Aidan Thompson and Andrew Maile, 'Character Virtues in Policing' (University of Birmingham Jubilee Centre for Character and Virtues, 2021) at [https://www.jubileecentre.ac.uk/userfiles/jubileecentre/pdf/Research%20Reports/CharacterVirtuesinPolicing\\_ResearchReport.pdf](https://www.jubileecentre.ac.uk/userfiles/jubileecentre/pdf/Research%20Reports/CharacterVirtuesinPolicing_ResearchReport.pdf).

24 Timothy Casey, 'Reflective Practice in Legal Education: The Stages of Reflection' (2014) 20 *Clinical Law Review* 317; General Medical Council, 'The reflective practitioner – guidance for doctors and medical students' (General Medical Council, 2021) at <https://www.gmc-uk.org/education/standards-guidance-and-curricula/guidance/reflective-practice/the-reflective-practitioner—guidance-for-doctors-and-medical-students>.

25 Schon, n 22 above; Copley, n 23 above.

any cognitive awareness, whereas the latter is associated with more conscious reflection for the purposes of turning an experience into a 'lesson learned'.<sup>26</sup> Both kinds of reflection have been described as forms of critical analysis and experiential learning in professional contexts.<sup>27</sup> The importance of reflection can also be found in older police sources, such as guidance issued by the former Independent Police Complaints Commission (IPCC) that encouraged officers accused of discrimination to routinely consider questions such as: why did the complainant come away with the impression that the treatment of them was unfair or discriminatory; and what else could have been done to prevent the complainant forming this view?<sup>28</sup> The IPCC explained that: 'this line of questioning is partly about getting the officer or staff member to reflect on how they can improve their practice'.<sup>29</sup>

### REVIEWING REFLECTIVE PRACTICE

Although the new regulatory framework does not define reflective practice *per se*, it does set out a process that is supposed to ensure that it takes place in certain circumstances. In practice, where PRI is suspected or identified by PSDs following the assessment of an external civilian complaint or when an internal conduct allegation is sent to them directly, they are required to oversee a Reflective Practice Review Process (RPRP). A relevant appropriate authority within the PSD, or whatever equivalent assessor exists, should refer the case to (or back to) the relevant supervisor or line manager who is required to act as a 'reviewer' for conducting the RPRP with the 'participating officer'.<sup>30</sup> The reviewer should notify the officer of the referral as soon as practicable, and the officer then has five working days to provide a written account. Meanwhile, the reviewer can carry out fact-finding, which can involve making enquiries that are reasonable and proportionate to establish the facts of the matter.<sup>31</sup> The guidelines state that the reviewer should not seek to conduct a detailed or protracted investigation, but simply gather facts and essential pertinent information in a timely fashion to provide for a fuller understanding of the context and circumstances of the matters being discussed. Enquiries should be 'light touch' and limited in scope. In some cases, the reviewer will already be in possession of relevant documents collated by PSD when deciding how the matter should be handled. Only where necessary should the reviewer request an account about what has happened from another individual or witness other than the complainant. If substantial evidence comes to light that misconduct has taken place, the reviewer should not broaden their enquiries but must simply refer the case to PSD for a new assessment. Once the reviewer has enough information for a

26 Christopher, n 23 above.

27 Barry Bright, 'Reflecting on reflective practice' (1996) 28 *Studies in the Education of Adults* 162.

28 IPCC, 'Guidelines for handling allegations of discrimination' (Independent Police Complaints Commission, 2015) 50 at [https://www.policeconduct.gov.uk/sites/default/files/Documents/research-learning/guidelines\\_for\\_handling\\_allegations\\_of\\_discrimination.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/research-learning/guidelines_for_handling_allegations_of_discrimination.pdf).

29 *ibid*, 50.

30 Home Office, n 17 above, para 13.5.

31 *ibid*, 161.

meaningful discussion, the officer should be invited to a Reflective Practice Review Discussion where reflective practice will be encouraged and the officer's written account, if provided, will be reviewed.

During the discussion, the reviewer should encourage the participating officer to be both retrospective, focusing on what did not go as well as it could have gone, and constructive, focusing on what could be done to improve and prevent future instances of similar behaviour in the future.<sup>32</sup> The participating officer could be asked, for example, what decisions not to act were taken; the effect of decisions not to act; and whether the officer has identified any lessons from the matter. The process reflects the concept of 'reflecting on action' discussed earlier. The reviewer is encouraged to facilitate an inclusive, positive, open and participative educational environment and set out proportionate, clear and constructive actions that enable the participating officer to learn from poor judgement, mistakes, and low-level wrongdoing, thereby preventing repeat behaviours and helping to put 'things right'.<sup>33</sup> The participating officer should not be subjected to an antagonistic process and admissions of unintentional mistakes, shortcomings or failings should not be to their detriment or result in them being blamed or punished. Home Office Guidance states that the process should be one that 'engenders trust and confidence' in line managers so that participating officers can admit mistakes knowing that line managers and senior leaders will take constructive steps to aid their improvement and to implement organisational learning where appropriate.<sup>34</sup> The discussion should culminate in the production of a Reflective Review Development Report, setting out a summary of the discussion, the lessons to be learned, the actions or next steps to be taken by the individual officer, the reviewer and the police force, and a specified period for reviewing matters. Actions could include apologies to colleagues or members of the public, additional training, mediation, shadowing other officers and staff, mentoring by other officers and staff, closer supervision, or referral to support services, among other outcomes.<sup>35</sup> Both participants should agree upon the contents of the report.

To facilitate, in the words of the Home Office, 'a greater willingness to discuss the facts at issue and a positive attitude about taking steps to put things right and improve for the future', and engender a broader 'learning culture within and across policing', the new framework even provides that matters discussed through the RPRP process are not admissible in any subsequent disciplinary proceedings brought against the participating officer, except where there is an admission relating to a matter that has not been referred to be dealt with under RPRP.<sup>36</sup> The report generated following the discussion, and all subsequent

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32 *ibid*, 31–32.

33 *ibid*, 27.

34 *ibid*, 155–156.

35 *ibid*, 163.

36 *ibid*, 154–158. It is not entirely clear whether and to what extent a police officer's reflection can be used in court. In a 2015 criminal trial of a junior doctor for manslaughter, records of the defendant's reflection were written up by a consultant and made available to the prosecution QC to assist his cross-examination. If it is not subject to legal privilege (which is doubtful) it may defeat the point of being 'confidential' and allowing a 'safe space' to genuinely offer sincere reflection as the officer in question will always know that a disclosure request could be made and



reviews, should simply be retained on the participating officer's record and be discussed as part of their next professional development review (PDR). Once the reviewer is satisfied that any actions outlined in the report have been taken and all concerns have been addressed, the RPRP comes to an end. In the event of a similar reoccurrence of the PRI, the matter could then be escalated to PSD under the assumption that disciplinary proceedings could now be justified (or moved over to the formal UPP procedures if appropriate).

The formalisation of reflective practice in this manner is relatively new in a policing context, even though somewhat similar processes of supervision have been a common feature of other professions, such as the medical profession, for a long time.<sup>37</sup> It has been recognised in the medical profession that the self-initiated pursuit of understanding or sense-making can lead to oversimplifications, stereotypes, and the incorporation of ideas without sufficient consideration. Where reflection is considered to be too important to be left to self-direction, formal organisational processes have been established to encourage and regulate it. Methods include question-answer reports, diaries that must be completed as part of regular duties to ensure individuals reflect upon their practice and their assumptions about the world in a conscious, deliberate and developmental way (known as reflective writing), and through external sources questioning the basis of values, beliefs and assumptions (such as clinical supervision).<sup>38</sup> Clinical supervision, for example, can involve a supervisor asking a practitioner to expand upon particular points, thoughts and feelings at each stage of a reflective model in order to evaluate them for validity, reliability and consistency, and consider alternative approaches and theories. It is perhaps this degree of formalisation that means that more informal processes of reflection can be transformed into reflective 'practice', something now considered to be an important part of being a professional. Understanding the nature of reflective practice and how the process operates is important since the new policing model may seem, at first glance, to be relatively comprehensive and sensible.

## CHECKS AND BALANCES

It is hard to disagree with the idea of reflection since its automatic or instinctive elements and its more deliberate and thoughtful dimensions appear to be often beneficial and, sometimes, inescapable. However, the reflective practice review process that has recently been developed for police officers in England and Wales is quite narrow in focus (located primarily at the nexus of 'reflecting on action' and breaches of the Standards of Professional Behaviour or underperformance) and is arguably open to abuse in the absence of appropriate checks and balances. One of the most glaringly obvious aspects of the PRI and more formal RPRP processes is that the Home Office seems to assume that each supervisor

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potentially used against them either directly through anything said or by inference; see David Nicholl, 'The role of reflection in the post Bawa-Garba era' (Royal College of Physicians, 28 June 2018) at <https://www.rcplondon.ac.uk/news/role-reflection-post-bawa-garba-era>.

37 Bright, n 27 above.

38 Christopher, n 23 above.

is the archetypal good supervisor. They are expected to have full knowledge of relevant regulations and policies, possess sound emotional intelligence and cultural competence, have an appropriate ability to praise and encourage, provide support in tackling difficult situations, intervene in instances of discrimination or any other forms of unfair treatment, and have the confidence to address performance and conduct matters in the right way, at the right time and at the appropriate level.

Home Office Guidance indicates that supervisors should be able to do all of this routinely, consistently, and have sufficient time to devote to it. Reviewers, for example, are expected to consider ‘the fullest circumstances of what has occurred and what may have influenced an individual’s behaviour or actions’, which includes taking into account the ‘whole person’.<sup>39</sup> The ‘whole person’ should include personal circumstances which may be affecting an individual’s health and their performance or behaviours in work and all other underlying circumstances that contribute to an individual’s actions, behaviour, mental state or stress levels. These processes and principles must also be ‘applied fairly and consistently to everyone’.<sup>40</sup>

Unfortunately, the competencies and expectations listed by the Home Office have not been routinely experienced by many police officers on the ground, particularly BAME officers, prior to the introduction of these processes. One of the main reasons for this is human bias. Police officers at all ranks are susceptible to systematic errors in thinking, such as availability bias, confirmation bias, prediction bias and stereotyping (conscious or unconscious).<sup>41</sup> In the absence of appropriate checks and balances, these biases can significantly disadvantage people. They may be associated with negative stereotypes or experiences or possibly generate undue advantages if associated with more positive experiences or feelings. Even those supervisors who strive to develop their staff, take responsibility for errors, and appropriately challenge officers at the earliest opportunity are susceptible to an array of biases. By omitting the necessary checks and balances, the Home Office appears to be reclaiming a position once held in the 19<sup>th</sup> and 20<sup>th</sup> centuries when calls for greater police accountability were resisted because it was believed that the competency and integrity of senior officers should be taken for granted. This is inherently problematic.

### Cultural competency

To help supervisors feel more comfortable and culturally competent to effectively manage and support BAME police officers, the NPCC discussed the merits of using real lived experiences of BAME officers as training examples, and to

39 Home Office, n 17 above, 163. Although expansive, the standard of supervision outlined in Home Office Guidance appears to fall short of comparable standards in medical practice, for example the role of the Responsible Officer, in detail and substance: see NHS, ‘Responsible Officer’ (NHS England, 2021) at <https://www.england.nhs.uk/medical-revalidation/ro/> (last visited 6 May 2021).

40 *ibid.*, 5.

41 Daniel Kahneman, *Thinking, Fast and Slow* (New York, NY: Macmillan, 2011).

facilitate interactive training sessions where supervisors can listen and feel free to be curious about cultures, histories, heritages and experiences, and ask questions in a safe environment.<sup>42</sup> Although not listed as one of its formal recommendations, the NPCC reported that focus groups unanimously believed that this was one of the best ways to educate supervisors, help them to develop the skills needed to have difficult conversations, and embed culture change. In contrast, the reality reported by many supervisors was that leadership training was poor, with little to no focused training on cultural awareness.<sup>43</sup> Leadership training reportedly tends to prioritise operational, administrative and financial responsibilities, while diversity components can be weighted more heavily towards police–community relations rather than internal relations between officers.<sup>44</sup> The effect, as reported by police supervisors, was that they can be left feeling uncomfortable when discussing cultural issues.<sup>45</sup> The realisation of equality and diversity can thus begin to seem intractable and unachievable to the officers serving under them.

Unfortunately, the new framework for reflective practice does not specifically provide for the kind of skills that could make supervisors feel more culturally aware and competent. Home Office Guidance does little other than state that ‘line managers and supervisors have an important responsibility in engaging in difficult conversations’.<sup>46</sup> If racial and ethnic minorities within police forces are to trust that supervisors finally have cultural competencies (after many admitted that they did not), they require evidence not only of appropriate outcomes but of new moral values. However, the regulations are devoid of any real understanding of cultural competence and contain no clear mechanisms for measuring or maintaining it.

### An array of other supervisory biases

The police supervisor is integral to the informal PRI process and the RPRP procedure. In terms of the PRI process the supervisor often represents the lowest appropriate managerial level to deal with PRI, whilst they will often act as the reviewer in the RPRP procedure. Despite the frequent implication of first line supervisors in policing scandals, empowering these supervisors has long been a theme of major government–commissioned reviews of policing. It is precisely because the supervisor is widely believed to shape their subordinates’ understanding of what is possible and what is not and are in the best position to evaluate front-line officers that they are both implicated when things

42 NPCC, n 1 above, 30.

43 *ibid*, 33.

44 Nick Bland, Gary Mundy, Jacqueline Russell and Rachel Tuffin, ‘Career progression of ethnic minority officers’ (London: Home Office Policing and Reducing Crime Unit, 1999); Ellis Cashmore, ‘Behind the window dressing: ethnic minority police perspectives on cultural diversity’ (2002) 28 *Journal of Ethnic and Migration Studies* 327; Mike Rowe, *Policing, Race and Racism* (Abingdon: Routledge, 2012).

45 Simon Holdaway, ‘Constructing and sustaining “race” within the police workforce’ (1997) *British Journal of Sociology* 19; Smith et al, n 2 above.

46 Home Office, n 17 above, 155.

go wrong and are central to new efforts of reform. Reforming the powers and influence of first line supervisors is a hazardous endeavour: attempts to increase their power and discretion to reward or discipline police officers have, in some cases, created a cult of personality and loyalty, whereas rendering them less powerful can encourage the creation of more informal ways to motivate and blame officers which can engender secrecy and manipulation.<sup>47</sup> For these reasons, various reforms have tried to devolve power and responsibility to supervisors while shifting their focus from ideas of reward and punishment to modes of learning and development.<sup>48</sup>

The new definition of misconduct and the associated PRI processes for all low-level breaches of the Standards of Professional Behaviour attempt to bestow upon supervisors the relevant power and discretion, allied to a responsibility to focus on the whole person, the fullest circumstances, and learning and development. However, superficial treatment of the complexities of police management risks papering over important influences, such as power imbalances and biases. In reality, supervisors will usually only have partial information when dealing with alleged breaches of the Standards of Professional Behaviour. Police officers and civilian witnesses may not remember or have noticed all minutiae during a quick encounter, and no one will have a complete understanding of the various behavioural histories and situational factors that shape encounters. Supervisors or reviewers are also likely to be affected by wider organisational policies and political, social and cultural factors that may encourage them to give more thought or weight to one particular aspect of practice and devalue or ignore other elements.<sup>49</sup> Supervisors are unlikely to be acutely aware of all of these influences and may simply be persuaded by those immediate examples that external sources and their own personal experiences, values, or beliefs bring to the forefront of their minds. Moreover, various research studies indicate that supervisors and practitioners tend to opt for strategies that are superficial, simplistic, easily actionable, convenient or habitual, rather than the more problematic or difficult kind.<sup>50</sup> They may also be more inclined to weigh evidence to confirm organisational theories rather than consider and accept alternatives, contradictions or the presence of errors in current practice and policy. The demeanour of an officer when asked to reflect on their behaviour (for example, whether they respond defensively to questions or provide comprehensive accounts without much prompting) may even be a determinative factor in a supervisor's approach. As a result, a supervisor's determinations about what could

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47 Maurice Punch, 'Rotten orchards: Pestilence, police misconduct and system failure' (2003) 13 *Policing and Society* 171.

48 William Taylor, 'Review of Police Disciplinary Arrangements Report' (London: Home Office, 2005); Chip Chapman, 'An Independent Review of the Police Disciplinary System in England and Wales' (Cabinet Office, 2014) at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/385911/An\\_Independent\\_Review\\_of\\_the\\_Police\\_Disciplinary\\_System\\_-\\_Report\\_-\\_Final....pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/385911/An_Independent_Review_of_the_Police_Disciplinary_System_-_Report_-_Final....pdf) (last visited 1 March 2021).

49 John L.M. McDaniel and Ken G. Pease, 'Policing, AI and choice architecture' in John L.M. McDaniel and Ken G. Pease (eds), *Predictive Policing and Artificial Intelligence* (Abingdon: Routledge, 2021).

50 Bright, n 27 above; Christopher, n 23 above.

or should have happened, about the particular actions or choices available to police officers on the ground and their range of plausible effects, and future developmental needs of an officer will often be highly questionable. Supervisors will usually interpret information, make assumptions about which factors are true and decide upon a course of action based upon an array of biases, and they will be tempted to do so quickly.

From a comparative perspective, research published by the General Medical Council (GMC) centring on issues of reflective practice indicates that both the reviewer and participant will tend to avoid delving into areas they feel less confident in, coupled with a palpable reluctance of both parties to reveal errors, shortcomings and deliver negative feedback for fear of causing upset.<sup>51</sup> When it comes to delivering negative feedback, supervisors have reported a temptation to ignore issues that are difficult to confront partly because the cognitive load is considered to be too much and partly due to a fear of complaints and ramifications of being accused of bullying. Supervisors reported being concerned (and frustrated) when participants got stuck on something that was not relevant, when a participant asked them something they did not know, when participants got defensive or when participants denied there was any problem at all, laying blame on the supervisor instead. In a policing context, Chapman's review of the police disciplinary system in 2014 found that officers often refused to recognise that they had done anything wrong.<sup>52</sup> We would argue, in addition, that BAME participants in reflective practice who consider themselves to be falsely accused would be entitled to be defensive, especially where they perceive an allegation to be motivated by race. The GMC research mentioned above identified a vacuum of honest feedback and reflection in the medical space, where reflective practice processes are more mature.<sup>53</sup> It is remarkable then that the new regulations largely ignored this reality, especially when similar concerns about objectivity, honesty and confrontation are all well established in the academic literature on police appraisal and promotion processes.<sup>54</sup>

The simple fact that reflective practice has been applied somewhat uniquely to the area of misconduct, to signal problematic behaviours and improvements that can be difficult to discuss, may serve to discourage practitioners from committing to the process. Police officers who participate in reflective practice with their supervisors may ultimately experience practices that lie on a spectrum between a supervisor's token acceptance of the principles of reflective practice, at one end, to advocating for a particular approach or view at the other, perhaps coupled with the threat of discipline if their wishes are not adhered to. Where supervisors strive for a particular behavioural change or goal, which is what

51 Alice Rutter and Catherine Walton, 'Good conversations, fairer feedback' (General Medical Council, 2020) at [https://www.gmc-uk.org/-/media/documents/good-conversations-fairer-feedback-research-2019\\_with-cover.pdf?la=en&hash=8DC231C6017249DC93FB0238E12189AA3B9C6F54](https://www.gmc-uk.org/-/media/documents/good-conversations-fairer-feedback-research-2019_with-cover.pdf?la=en&hash=8DC231C6017249DC93FB0238E12189AA3B9C6F54) (last visited 1 June 2021).

52 Chapman, n 48 above, 17.

53 see also Catherine Scarff, Margaret Bearman, Neville Chiavaroli and Steve Trumble, 'Trainees' perspectives of assessment messages: a narrative systematic review' (2019) 53 *Medical Education* 221.

54 Bland et al, n 44 above; see also Mike Rowe, *Policing the police: Challenges of democracy and accountability* (Bristol: Policy Press, 2020).

the regulations seem to expect, scholars of reflective practice might even argue that this is more symptomatic of a non-reflective stance. It could also be symptomatic of attempts to legitimise existing professional practices through reflective processes rather than challenging them. The creation of new policies on cultural difference at the top of the police hierarchy may do little other than continue to collide with a litany of bottom-up cultural norms that shape and define relationships between the lower ranks. In practice, messages from the top to conduct routine one-to-one meetings between supervisors and members of their team, so that they can get to know the 'whole person' and pick up on cultural and welfare needs at the earliest opportunity, can collide with the daily operational, administrative and financial demands they face.

The person who will bear the brunt of system dysfunction is the rank-and-file officer. It is the supervisor who has the wide discretion to determine what kinds of behaviour deserve less or more formal treatment, and whether and how to address questionable behaviour, particularly under PRI. The participating officer is powerless in comparison. Although the participating officer should consent to the plan drawn up under RPRP, it is the reviewer who is expected to know what remedial actions to set out and to monitor their performance over time. The reviewer's rationale (explaining why they decided to deal with an officer's behaviour through advice or by taking no further action etc) is not subject to the same kind of transparency as the appropriate authority's rationale in the more formal misconduct process.<sup>55</sup> One of the main weaknesses with the more formal RPRP process in particular is that it is the participating officer who formally engages in reflective practice and should recount their thought process, not the reviewing supervisor. Participating officers cannot bring Federation Representatives or any other kind of union or legal representation into RPRP meetings to interject or make representations on their behalf. Although the RPRP process cannot be used by the reviewer to hinder a participating officer's promotion, the threat of referral to misconduct investigation or unsatisfactory performance procedures looms if PRI is not addressed to the reviewer's satisfaction. The process does not take account of established convention that rank-and-file officers and staff are reluctant to challenge senior officers out of concern that doing so might affect their career progression.<sup>56</sup>

The accuracy, authenticity, objectivity and neutrality of a supervisor's approach will have a significant bearing on the practitioner, who may suspect that a supervisor is acting only in their own self-interest, consider them too far removed from the action, or that they are failing to listen, and thus reject their possibly erroneous advice from the outset.<sup>57</sup> Participants will also be aware of a supervisor's potential use of gossip as an alternative form of feedback before a reflective practice review process even takes place. In

55 See John L.M McDaniell, Kate Moss, Ken G. Pease, and Paramjit Singh, 'Police misconduct, protraction and the mental health of accused police officers' in John L.M McDaniell, Kate Moss and Ken G. Pease (eds), *Policing and Mental Health* (Abingdon: Routledge, 2020).

56 See Bland et al, n 44 above.

57 Doyin Atewologun, Roger Kline, and Margaret Ochieng, 'Fair to Refer?' (General Medical Council, 2019) at [https://www.gmc-uk.org/-/media/documents/fair-to-refer-report\\_pdf-79011677.pdf](https://www.gmc-uk.org/-/media/documents/fair-to-refer-report_pdf-79011677.pdf) (last visited 1 June 2021); Bright, n 26 above.

the medical profession, doctors have reported losing trust in reviewers and supervisors who speak about them behind their backs.<sup>58</sup> It is worth noting too that participants may engage in insincere reflection where the 'right' things are said to give the appearance of reflection but not actually believed in or held to be true, potentially to avoid prolonging the process. Given how hard it is to judge a person's intention, it is contended that any serious issue such as discrimination may not be appropriately resolved in this manner alone.

### Accounting for racism (even at the margins)

The explanation that supervisors are disproportionately referring BAME officers to internal conduct proceedings to avoid 'difficult' conversations, because they are uncomfortable and fear being accused of cultural ignorance or racism, appears to have been accepted by police leaders.<sup>59</sup> The vast majority of police officers are thought to prize equality, equity and integrity, despite the prevalence of bias and heuristics. However, a small number of police officers likely hold racist beliefs.<sup>60</sup> Smith et al, in their seminal report, did not entirely discount the possibility of racial bias as a driver of some volume of disproportionality. However, as they were not commissioned to conduct comprehensive evaluations or provide a rigorous explanatory account of disproportionality this was not explored further.<sup>61</sup> Subsequently, analysts attached to the MPS went one step further and discounted the possibility that disproportionality was driven by length of service; age of officer; differences in allegation type; or differences in on-duty and off-duty behaviour.<sup>62</sup> However, they found that no extant studies put forward conclusive evidence as to the causes of disproportionate numbers of referrals of BAME officers or 'what works' in response to such disproportionality. The authors of the more recent NPCC review admitted that they had not rigorously examined the causes of the disproportionality they found and accepted that 'strong conclusions about race disproportionality cannot be made' due to the relatively small sample size.<sup>63</sup>

Attempts to explain disproportionality in terms of supervisor discomfort are diametrically opposed to the beliefs of some BAME officers who interpret the actions of supervisors in terms of racism, whether individual, institutional or structural. On the ground, BAME officers have spoken of experiences of racism and unfair treatment from the moment they enter the service. The NPCC heard about supervisors who would frequently make racist comments in the presence of several team members or fail to challenge racist comments among officers and staff.<sup>64</sup> Respondents spoke of supervisors who would seek to 'remind them of their place' by criticising or admonishing them in front

58 Rutter and Walton, n 51 above.

59 See NPCC, n 1 above.

60 See Cashmore, n 44 above; NPCC, *ibid*.

61 Smith et al, n 2 above.

62 NPCC, n 1 above, 22.

63 *ibid*, 45.

64 *ibid*, 25-26.

of colleagues rather than in private.<sup>65</sup> When BAME officers complained or lodged a grievance about such behaviours or where they witnessed abuses of police powers against BAME civilians, they frequently reported being disbelieved, marginalised or facing reprisals in the form of counter-allegations by white officers.<sup>66</sup> Respondents described attending incidents involving minority communities where they were able to utilise their cultural awareness and experience to understand, interpret and deal with problems, occasionally by exercising their discretion not to arrest someone, only to find supervisors ignoring their justifications and even their admissions of error, and referring them to disciplinary proceedings for alleged neglect of duty.<sup>67</sup> This was described as a way of controlling BAME officers, discrediting them and signalling their place within the organisation.

Rojek and Decker have questioned whether similar occurrences in the US are due in part to perceptions among white officers that the growing representation of minority officers is a threat to their economic and political status. This can lead to retaliation via misconduct proceedings.<sup>68</sup> More broadly, such questions have also been raised by the United Nations High Commissioner for Human Rights. The High Commissioner recently concluded that countries with a legacy of colonialism which resulted in sizeable communities of people of African descent (among others) or with significant links to the transatlantic trade in enslaved Africans, such as the UK, debased their status in comparison to white communities. This debasement of status continues to persist 'due to misconceptions that the abolition of slavery, the end of the transatlantic trade in enslaved Africans and colonialism, and measures taken by States to date, have removed the racially discriminatory structures built by those practices and created equal societies'.<sup>69</sup> Such misconceptions and 'cultures of denial', the High Commissioner argued, can be found in the UK, the US and elsewhere.<sup>70</sup> She even named police disciplinary proceedings as one constituent part of the broader interrelated systems of laws, policies, practices and attitudes in state institutions that can give rise to systemic racism. Police disciplinary systems, she argued, are partly responsible for 'enduring harmful and degrading associations of Blackness with criminality and delinquency' and perpetuating a widespread presumption of guilt against people of African descent.<sup>71</sup>

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65 Smith et al, n 2 above, 76–77.

66 Ellis Cashmore, 'The experiences of ethnic minority police officers in Britain: under-recruitment and racial profiling in a performance culture' (2001) 24 *Ethnic and Racial Studies* 642; EHRC, 'Section 20 investigation into the Metropolitan Police Service' (Equality and Human Rights Commission, 2016) at <https://www.equalityhumanrights.com/sites/default/files/section-20-investigation-into-the-metropolitan-police-service-august-2016.pdf> (last visited 20 June 2021).

67 NPCC, n 1 above.

68 Jeff Rojek and Scott H. Decker, 'Examining racial disparity in the police discipline process' (2009) 12 *Police Quarterly* 388.

69 UNHCHR, 'Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers' (United Nations High Commissioner for Human Rights, 2021) 6–8 at <https://undocs.org/en/A/HRC/47/53> (last visited 28 June 2021).

70 *ibid.*, 1.

71 *ibid.*, 6–12.



Harmful stereotypes of black officers as ‘troublemakers’ and Asian officers as ‘dishonest’ were reported in several of the aforementioned reviews.<sup>72</sup> Smith et al, for example, interviewed a senior white officer who described Asian officers as being at higher risk of dishonesty, opining that within their culture there is a greater sense of loyalty to the community and to their family (for example, living with their parents and accepting the authority of the male head of the family) than to the police family, so they may be more willing to lie for the former to the latter.<sup>73</sup> Another practical example of discrimination in the context of police management is the application of equality legislation which is designed to encourage supervisors to treat all employees equally regardless of race or gender. Hickman et al found that equality legislation can, in practice, act as a source of pressure on line managers to maintain diversity within a department, thus, directly or indirectly acting to influence a supervisor to look past an infraction by an officer who is a member of an under-represented group.<sup>74</sup> Though, in the knowledge that this may create a degree of discontent among a predominantly white group, supervisors may actually seek to pre-empt or counteract wider perceptions of leniency by proactively being seen to discipline BAME officers more vigorously. From this perspective, it is easy to see how the new PRI processes may allow entrenched and new forms of discrimination, distinction, preference, inclusion, and exclusion to manifest.

The Home Office appears to be acutely aware of the problem of reprisals and victimisation of BAME police officers. Its guidance states that ‘it is essential that individuals are confident that reporting wrongdoing will be a positive experience and not result in detrimental treatment by their force or colleagues’.<sup>75</sup> It even outlines various kinds of detrimental treatment, such as ‘a deliberately false allegation ... intimidation, bullying, isolation, personnel matters such as staff moves’.<sup>76</sup> However, it does little other than restate that anyone who ‘takes action as a reprisal against a police officer or member of staff who has made a protected disclosure ... should be considered to have breached the Standards of Professional Behaviour’.<sup>77</sup> No new mechanisms of oversight or audit were introduced. If anything, the new reflective practice processes may further obscure the true extent of the problems or make them much worse.

## Transparency

Lastly, one of the reasons we know about the problem of disproportionality is that various researchers were able to access PSD records on allegations and ethnicities. Even then, the data picture was poor. The NPCC, for example, found that allegations concerning officers and staff who identified as Turkish

72 NPCC, n 1 above; Smith, n 2 above, 70.

73 Smith, n 2 above, 83.

74 Matthew J. Hickman, Alex R. Piquero and Jack R. Greene, ‘Discretion and gender disproportionality in police disciplinary systems’ (2000) 23 *Policing: An International Journal of Police Strategies & Management* 105.

75 Home Office, n 17 above, 16.

76 *ibid.*, 19.

77 *ibid.*

and Greek had been collapsed into the BAME category without the possibility of distinguishing between them in some places.<sup>78</sup> More broadly, the ethnicity of the officer or staff member was not known or not recorded in 11 per cent of conduct allegations.<sup>79</sup> It is worth noting that police forces, as employers, have an obligation to record ethnicity data concerning their employees, and should presume that employees are not happy to specify their ethnicity because of fear of detriment or some other negative consequence. Four years earlier, Her Majesty's Inspectorate of Constabulary (HMIC) had described PSD data recording and quality processes as 'unacceptable' nationally.<sup>80</sup> The lack of notable improvement in the interim is arguably inexcusable, considering significant improvements have been realised in other professions (such as the medical profession) in that time.

It is plausible that the data picture may get much worse. Under the new reflective practice system, up to 80 per cent of the cases that were previously sent to PSDs may potentially be dealt with by first line supervisors as PRI and reflective practice. Oral evidence to the Home Affairs Committee indicates that, historically, up to 80 per cent of cases resulted in management advice, management action or no further action. These cases should now be redirected towards PRI and reflective practice.<sup>81</sup> This means that, although PSD records may still show some degree of disproportionality across more serious cases, we may be unable to assess like-for-like improvements or deteriorations over time since PSD data may only contain a fraction of the previous caseload. When PSDs or external researchers conduct analyses of disproportionality in police misconduct cases, the new definition of misconduct will apply and those cases designated as PRI may not be included. This should be cause for concern since the majority of cases which have been earmarked for PRI may contain significant levels of bias and cultural discomfort. It is the PRI system that has been designed to capture many of those low-level cases that previously resulted in management advice, management action and 'no further action' outcomes for BAME officers yet were still referred to PSDs to handle (and often involved little more than informal 'corridor conversations' for white officers). The new PRI processes, as designed, do not leave the same kind of paper trail that formal PSD investigations do, so it may become much harder to analyse processes for bias and examine datasets for disproportionality. We would have expected the regulations and Home Office Guidance to make clear provision for such scrutiny (even to counteract allegations of individual, institutional and structural discrimination).

We must caution, however, that the aspirational 80 per cent target is unlikely to be realised in the short-term (or at all). Responses to freedom of information requests indicate that several police forces have been utilising reflective practice logs on a very limited basis. Fewer than 50 reflective practice reviews have been

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78 NPCC, n 1 above, 45–46.

79 *ibid.*

80 HMIC, n 4 above, 10.

81 HAC, 'Police Conduct and Complaints Inquiry: Oral Evidence' (Home Affairs Committee, 2021) at <https://committees.parliament.uk/work/495/police-conduct-and-complaints/publications/oral-evidence/> (last visited 5 July 2021).

recorded every year on average within forces such as the West Midlands Police, Staffordshire Police and West Yorkshire Police.<sup>82</sup> Powerful cultural forces, apathy, dysfunction and a desire to continue diverting risk elsewhere may be affecting usage and co-option.<sup>83</sup> In WMP, for instance, self-initiated reflective practice logs recorded on the force's electronic recording system decreased from 25 in 2020 to 13 in 2021, while manager-initiated reflective practice logs decreased from 26 in 2020 to 23 in 2021.<sup>84</sup> In several police forces, PSDs are still directing the majority of reflective practice taking place.<sup>85</sup> Nevertheless, this is no reason to become complacent.

The kinds of complex incidents and behaviours that supervisors and PSDs deemed suitable for reflective practice between 2020 and 2022 included: the disclosure of police information to members of the public without a specific policing purpose; sending sexual comments and images; inappropriate sexual conduct on duty; sexual harassment; improper treatment of a rape victim; impolite language during an arrest; circulating a video clip of an arrest to colleagues; excessive use of force; failures to investigate an alleged offence; and breaches of Covid-19 regulations, among others.<sup>86</sup> Although cases of alleged discrimination will, in many cases, still go to PSDs for investigation, it is the discriminatory treatment of people with protected characteristics and other categories across all of these kinds of cases that give rise to disproportionalities. We have learned through experience, and the unfair treatment of police officers, that we must search for disproportionalities everywhere and remain constantly vigilant.

The task facing analysts, researchers, police leaders and policymakers is to ensure that disproportionalities are being identified and addressed. Standards of professional behaviour should constantly improve, and be seen to improve. Reductions in disproportionalities should be attributed to smart reforms, not the introduction of new processes and categorisations that serve to push un-savoury occurrences downwards and out of sight. It is quite obvious that, for a progressive vision of supervised reflective practice to exist, there should be substantial systems to train, qualify, review, quality assure and calibrate decisions of

82 Staffordshire Police, 'Freedom of Information Request 13921' (Staffordshire Police, 2022) at <https://webcache.googleusercontent.com/search?q=cache:vDhPTN8GZFIJhttps://www.staffordshire.police.uk/SysSiteAssets/foi-media/staffordshire/2022-published-foi-requests/january/foi-13921-reflective-practice-data.xls+&cd=4&hl=en&ct=clnk&gl=uk&client=safari> (last visited on 5 June 2022); West Yorkshire Police, 'Freedom of Information Request 988866/21' (West Yorkshire Police, 2022) at [https://www.westyorkshire.police.uk/sites/default/files/foi/2022-01/january\\_2022\\_foi\\_988866-21\\_reflective\\_practice\\_reviews.pdf](https://www.westyorkshire.police.uk/sites/default/files/foi/2022-01/january_2022_foi_988866-21_reflective_practice_reviews.pdf) (last visited 5 June 2022); North Wales Police, 'Freedom of Information Request Reference Number 2021/ 1143' (North Wales Police, 2022) at <https://www.northwales.police.uk/cy-GB/SysSiteAssets/foi-media/north-wales/disclosure-2021/2021-1143-reflective-practise-reviews.pdf> (last visited on 5 June 2022); West Midlands Police, 'Freedom of Information Request 1171A/21' (West Midlands Police, 2022) at <https://foi.west-midlands.police.uk/reflective-practise-process-1771a-21/> (last visited 5 June 2022).

83 Robert Reiner, *The Politics of the Police* (Oxford: OUP, 2010); Peter K. Manning, *Police Work* (Cambridge, MA: MIT Press, 1977).

84 West Midlands Police, n 82 above.

85 *ibid.*

86 Staffordshire Police, n 82 above; West Yorkshire Police, n 82 above; North Wales Police, n 82 above.

reviewers. However, we fear the absence of appropriate checks and balances in the relevant regulations and Home Office Guidance mean that greater obfuscation is entirely possible. Both the NPCC and the Independent Office for Police Conduct (IOPC) responded to freedom of information requests in 2022 confirming that they had not carried out a comprehensive review of the new processes, nor had they examined them for racial and ethnic disproportionalities.<sup>87</sup>

## CONCLUSION

Following the publication of various reports in this space (many of which police forces commissioned themselves), it appears that senior police officers cannot state definitively that racism does not affect the management of internal conduct matters involving BAME police officers or some elements thereof. The requisite research has not been carried out (and independently evaluated). Senior police officers can say they do not believe that systemic racism affects the management of internal conduct matters only because they have not carried out sufficient research (it has not been proved that the discomfort explanation tells the full story). The question around supervisor discomfort has been asked and answered but questions around racism and other associated manifestations have not.

The new PRI and reflective practice processes introduced pursuant to the Police (Conduct) Regulations 2020, the Police (Complaints and Misconduct) Regulations 2020; the Police (Performance) Regulations 2020; and the Police Appeals Tribunal Rules 2020 have not established a new landscape that will suddenly make supervisors more culturally competent and comfortable, or hold them accountable if their decisions are racially or otherwise biased. It would be entirely wrong, in our view, for senior police officers to begin using new misconduct datasets to draw conclusions that supervisors and line managers have positively responded to the regulatory changes and addressed disproportionalities simply because many cases have been jettisoned out of misconduct data and into PRI processes (police forces do not even expect that all PRI and reflective practice will be recorded on force computers).<sup>88</sup> Efforts to encourage more reflective practice and greater police autonomy should not come at the expense of transparency and accountability. For BAME police officers who have been disproportionately subjected to allegations of wrongdoing, it is entirely unclear how police forces define and measure cultural competence, how police supervisors demonstrate it, and whether police forces will even seek to evaluate whether and to what extent bias exists or whether BAME officers feel that their cultural contributions are valued.

87 NPCC, 'Freedom of Information Request Reference Number 195/2022' (National Police Chiefs Council, 2022); IOPC, 'Freedom of Information Request Reference Number 5023580' (Independent Office for Police Conduct, 2022).

88 See West Midlands Police, n 82 above.