

What is driving ethnic disproportionality at the point of internal allegation in the misconduct process?

Recommendations

Research report from the MPS Strategic Insight Unit – November 2023

Background and context

This paper accompanies a Strategic Insight Unit (SIU) research report¹ exploring the causes of why misconduct allegations are disproportionately recorded for Black and ethnic minority officers in the Metropolitan Police Service. The research findings identified several *possible* explanations for disproportionality at the internal allegation stage of the misconduct process. This paper suggests potential interventions that could mitigate the potential drivers of disproportionality as identified from those findings. These recommendations are not exhaustive.

The causes of disproportionality in misconduct allegations are complex, intersecting and remain not fully understood. Our findings did not identify a principal driver of disproportionality; however, we did identify five clear themes that are likely to be contributing to it. These were:

1. Poor quality and patchy training for line managers on how to manage conduct and performance matters. Poor quality training and a lack of decision-making tools supporting those in PSUs and the DPS.
2. Procedural issues: an overly complex system and unclear guidance.
3. Susceptibility to racism and cultural bias among line managers.
4. Inconsistent decision-making by OCU line managers and those in the PSUs and the DPS.
5. A culture of informal resolution (which can be utilised positively), meaning that some officers are treated informally in cases of wrongdoing, whereas others might be treated more punitively under formal management processes for similar cases of wrongdoing

Our research questions focussed on exploring the reasons why there is disproportionality related to ethnicity in misconduct process, rather than the development of solutions. As a result, the following recommendations are high-level strategic recommendations that require further work and potentially external expertise to determine the practicalities of designing and implementing solutions.

Some recommendations inevitably overlap with other ongoing work in the Department of Professional Standards (DPS), Learning & Development (L&D) and the new Culture Diversity Inclusion (CDI) directorate, and it is crucial that this existing work is more closely coordinated to ensure a whole systems approach when trying to influence officer, staff and organisational behaviours.

As we explain in the main report, measuring disproportionality is complex and limited by available data in order to be able to isolate the specific effects of ethnicity in decision-making outcomes. Our mixed-methods research was only able to use descriptive statistics to indicate the potential extent

¹ Strategic Insight Unit (2023), *What is driving ethnic disproportionality at the point of internal allegation in the misconduct process?*

of disproportionality related to ethnicity at the point of initial allegation of misconduct. The limitations of this must be recognised - it means we cannot be certain of scale and extent of racial bias in decision-making once all other factors affecting behaviours are controlled for, such as gender, age, education, length of service, professional histories, mental health or exposure to traumatic events as an example. We therefore need to be very careful and not draw strong conclusions from this research as to the scale, extent and causes of disproportionality in the misconduct system. Despite this, it remains vital that we recognise the disproportionality related to ethnicity that has been identified in the numbers of people subject to misconduct allegations. The evidence for this is tangible, reflects the experiences of MPS staff and officers, and is a source of hurt that the MPS has a responsibility to address. Indeed, this issue is a theme within the London Race Action Plan.

Aims and objectives

The overarching aim of the recommendations outlined below is to reduce (and eventually eliminate) ethnic disproportionality at the internal allegation stage of the misconduct system. The recommendations aim to achieve the following:

- Acknowledgment by all line management ranks and levels of seniority that disproportionality at the allegation stage of the misconduct system exists – albeit the scale and extent cannot be accurately revealed without more sophisticated statistical analysis (such as regression analysis) to understand the unique impact of ethnicity.
- Line managers are equipped with the skills to manage standards of conduct and performance appropriately and proportionately.
- Line managers are equipped with the skills to exercise cultural competence and have confidence in managing diverse teams.
- More consistent decision making on managing conduct and performance issues by line managers.
- More consistent decision-making on misconduct cases by the PSUs and DPS.

Throughout this recommendations report, we often refer to conduct and performance concerns as a combined issue. This is deliberate as our findings suggest line managers often confuse the two or may deliberately prefer to use misconduct policies over performance management as the former may be considered less onerous on the line manager. This is an obvious cause of inconsistency, unfairness and potentially disproportionality.

Recommendations for policy changes

Below we make specific recommendations in terms of policy changes and/or implementation.

We think that Learning Through Reflection (LTR) may benefit from a review regarding how it is managed in the MPS. Additionally, standards of line manager responsibilities in terms of staff development, support and supervision of conduct and performance may benefit from reframing, in policy terms.

HR have multiple policies outlining line manager responsibilities to deal with specific issues or problems, but there is no single policy outlining the full spectrum of line manager responsibilities (both supportive and disciplinary), and how to move along this spectrum as part of regular supervisory duties. Additionally, the guidance on performance and conduct management is currently fragmented and stored in multiple locations. The purpose of strengthening policy and guidance in this area would enable the identification of barriers to behavioural change that are

currently inhibiting line managers' ability to resolve conduct and performance concerns before the need to use the formal misconduct process.

Recommendation 1: Based on findings suggesting line managers find guidance on the misconduct system and LTR confusing and that staff experience inconsistency in informal resolution, we recommend a specific line management policy that covers the spectrum of line manager responsibilities to support and develop staff, including the need to tackle performance and conduct concerns at the earliest available opportunity.

Recommendation 2: We recommend that guidance covering line management responsibilities is consolidated into a single accessible product, tailored according to levels of seniority and associated responsibilities. The LMS has the capability to deliver this.

Recommendation 3: Based on our findings that some line managers may lack cultural competence, which might feed into disproportionality in the misconduct system, cultural competence and the ability to manage diverse teams should be recognised as an essential line manager capability, supported by practical continuous professional development (CPD).

This is a complex area and we recommend further work is undertaken as to how this could be achieved in practice (e.g. amendment to job descriptions and promotion considerations), and identify what skills line managers need to be culturally competent. It may be helpful not to frame CPD in this area as a 'diversity or inclusion' input (which can alienate staff) and instead frame it as skills training for effective line management. Practical training should equip line managers with skills to have difficult conversations with staff that include circumstances where protected characteristics (not limited to ethnicity) may affect perceptions of performance and conduct. However, this must go beyond the provision of unconscious bias training, which has been proven to be ineffective in changing workplace behaviours. We explore this more in recommendation 9.

Recommendation 4: We recommend greater diversity of thought at key decision-making points in the misconduct system. There needs to be greater ethnic minority representation in PSUs, in the DPS, and on misconduct panels. We recommend formal mechanisms to support AA decision-making which draw on expertise in understanding how protected characteristics affect staff needs and behaviours, and which may be relevant in determining how performance and conduct concerns are managed.

Recommendation 5: Our findings were clear that current guidance and communications on the appropriate use of LTR is insufficient. We recommend a review of LTR policy and its ownership and governance. We support the concept of LTR in principle (as did most of those we interviewed/surveyed). However, based on our findings, there is evidence to suggest that LTR as a DPS policy may be unhelpful and may undermine its intended purpose as a learning tool. DPS governance of LTR may encourage its use as a punitive sanction and prevent genuine engagement with LTR for fear of it being perceived as a DPS sanction with long term consequences for the employee. Alternative options include framing LTR as an Organisational Learning or Learning & Development policy.

Recommendation 6: If LTR data is to be used as a DPS insights tool, we recommend its careful consideration and total transparency with staff. Given that we have already found significant inconsistency, inappropriate usage and disproportionality in the use of LTR by line managers, its reliability as an insights tool needs to be considered, including its potential to increase disproportionality in management approaches.

Recommendation 7: Current MPS methodology for recording allegations of misconduct is inadequate in order to measure the prevalence of disproportionality – of any protective characteristic. We recommend that the submission of all MM1s (not just those ultimately classified

as a recordable conduct matter) is systematically recorded across the MPS. The DPS MM1 redesign project is already addressing this.

Taking a behavioural science approach

We recommend taking a behavioural science approach to design interventions that support the adoption of desired behaviours among staff dealing with performance and conduct matters. Above, we have identified areas of policy that require amendment and these policy changes need to be clarified before determining how to use behavioural science to implement those changes in practice.

Behavioural science can be defined as the systematic study of human behaviour. It uses evidence, frameworks and tools to define problems in behavioural terms, remove barriers to behaviour change, and design interventions around individuals and their behaviour. Such an approach requires strategy teams to articulate precisely what behaviour each group or group of individuals need to do, when and how. Such an articulation means that all parties involved in the programme understand what is required of them, and allows the monitoring of whether or not those behaviours are being performed and which interventions need more work. This approach has been used successfully in many large-scale programmes in domains such as healthcare (Reid et al., 2022), transport (Arnott et al., 2014), and climate change (Whitmarsh et al., 2021)².

The behavioural science approach requires expertise to use recognised behavioural change methodologies to map behavioural journeys in an end-to-end-systems approach. The Behaviour Change Wheel (BCW) (Michie et al., 2011) is a systematic framework for behaviour change, surrounded by nine intervention types and a further ring of seven levers that can be deployed by institutions or organisations to enable behaviour change.

Recommendations using behavioural science approaches

Below we make recommendations for how behavioural science might be used to help line managers and PSUs appropriately navigate informal resolution as well as the formal misconduct process. We then divide specific recommendations across three broad areas covering:

- All MPS Line managers
- The PSU Transformation programme
- The MM1 redesign project

Recommendation 8: Commission behavioural scientists to map behavioural journeys for line managers and PSUs in terms of supporting their responsibilities to develop staff and achieve expected standards of performance and conduct and make appropriate misconduct decisions. Use this mapping to inform a programme of interventions to achieve more consistent decision-making, early intervention and appropriate opportunity for informal resolution regarding performance and conduct concerns. The Strategic Insight Unit (SIU) now has the behavioural science capability to undertake this work, collaborating with relevant departments such as DPS, Learning & Development and the Leadership Academy to develop solutions.

Our misconduct research findings have already identified areas for behavioural change and we make specific recommendations below.

² References available on request.

Line manager training: education and skills

Our research has identified that current training is inadequate for line managers, PSUs, and AAs.

Training and processes need to sufficiently equip line managers, PSUs and AAs with the skills and confidence to navigate:

- The full spectrum of responsibilities and behaviours the MPS seeks in line managers
- How to have difficult conversation and provide constructive feedback
- The complexity of the misconduct regulations
- The internal MPS misconduct process
- The threshold at which behaviours should be classified as recordable conduct matters
- Uncertainty and ambiguity so that line managers are not dissuaded from seeking advice and taking action
- How to support the welfare of those who are subject to misconduct allegations and those who are the victims of the alleged behaviour.

Recommendation 9: Professionalise line manager training particularly at sergeant, inspector and chief inspector level, to equip line managers with specific skills to help them manage the full spectrum of supportive and disciplinary line manager responsibilities, including performance and conduct matters.

There are current work programmes in L&D and elsewhere exploring this. We recommend a review of current training and a learning needs analysis of the line manager function (not just for those new to role), following the conclusion of Recommendation 1 (developing a specific line management policy) and Recommendation 8 (using behavioural science to identify the desired behaviours and barriers to those behaviours, required to deliver such a policy in practice).

Specifically, line manager training should include:

- Information on disproportionality data (and its limitations) to ensure there is no doubt that the issue exists, and that there is individual and collective line manager responsibility to prevent disproportionality. The SIU can help design how such data is presented and discussed, to reflect the challenges of not fully understanding the scale and extent of disproportionality, as discussed above.
- Developing skills in having early conversations regarding workplace performance standards (regardless of how minor), and especially at the first indication of problematic performance or conduct. Training therefore must provide line managers with conversational tools and frameworks to help them plan and structure difficult conversations with those they manage, such as the SBI (situation behaviour impact) model: [Use SBI \(Situation-Behavior-Impact\) to Understand Intent | CCL](#)
- Case-based examples on managing performance and conduct which clearly demonstrate what constitutes 'good' line management, covering examples of effective uses of the misconduct and LTR processes, as well as examples of when the misconduct and LTR processes have not been used appropriately.
- Cultural competence case studies, modelling how to deal with cultural difference in a supportive way that encourages learning where necessary. Such training should equip line

managers with tools to have constructive conversations about cultural differences when it causes tensions in teams, and provide them with real world examples.

- Clearer guidance on the thresholds between behaviours requiring informal line management and those needing formal performance and misconduct intervention. We recommend guidance is supported by decision trees or other behaviourally informed tools to help the decision-making process.

We understand it is impossible to provide fool-proof guidance, as every case is unique. However, the inconsistency in the use of LTR and MM1 referrals shows that current guidance is insufficient for cases that are clearly not suitable from the outset. This lack of clarity encourages misuse of the misconduct and LTR processes and potentially feeds disproportionality.

- Clearer guidance on the definitions of 'fact-finding' and investigation when submitting an internal allegation of misconduct, clearly outlining what is and is not permitted by line managers. Our findings revealed some line managers submit MM1s because they erroneously believe only the DPS can further explore allegations. This is already being explored under the MM1 redesign project.

PSU Transformation programme

We are aware of the ongoing PSU Transformation programme and are supportive of the proposed changes to the PSU operating model to improve the quality and consistency of decision-making.

Recommendation 10: We recommend mandatory induction training for PSUs and AAs. This is in response to our findings that strongly indicated PSUs and AAs are ill equipped to perform their role effectively. There is currently very little (if any) training for PSUs and AAs.

Training should include:

- Practical skills on applying the 2020 Misconduct Regulations to real world scenarios.
- Thresholds for the assessment of misconduct referrals.
- General information on a broad range of topics that might come to the attention of PSUs (HR, performance management, Occupational Health, LTR, etc.) so that PSUs are able to signpost people away from formal misconduct proceedings when appropriate, and in a way that proactively helps the line manager address the problem(s) being raised.

Recommendation 11: In support of recommendation 10, we recommend the PSU Transformation programme explores the development of a decision-making framework and recording tool, aiming to improve consistency in DPS decision-making on misconduct cases.

The tool must help with assessing the severity of misconduct referrals and whether or not a referral should be classified as a recordable conduct matter. The use of such a tool could also support more sophisticated data analysis of levels and trends in disproportionality.

Recommendation 12: We recommend the introduction of anonymised case-management discussion forums for PSU staff to discuss misconduct referrals and their decision-making. This could help consistency by increasing diversity of thought in decision-making.

Recommendation 13: If not already happening, we recommend the PSU Transformation programme considers introducing peer review of AA assessments and regular dip sampling to

identify potentially bias and inconsistency in decision-making. We recommend that there is diversity of thought and experience among those conducting peer reviews (see recommendation 4).

Recommendation 14: We recommend the introduction of a formal feedback mechanism from PSUs to line managers who submit inappropriate MM1s, and for those who repeatedly submit inappropriate referrals to receive LTR. We recognise the potential risk of backfire effects deterring the reporting of concerns, meaning this must be managed carefully.

Recommendation 15: Our research found evidence of very low levels of trust in some PSUs, which may affect the likelihood of people seeking advice and support, in particular those with protected characteristics. We recommend clear communications outlining the proposed changes to the PSU operating model, the rationale for the changes and the level of rigour which will be applied to its implementation. For example, the introduction of enhanced vetting and resulting removal of some staff, and in some cases, the disbandment of whole PSUs.

MM1 Redesign

The SIU are aware of the ongoing work to redesign and digitalise the MM1 form and are working closely with the DPS.

Recommendation 16: As previously agreed, we recommend that the SIU co-lead the design of the new MM1 form, alongside the DPS who will own implementation. This work is already ongoing.

Recommendation 17: We recommend that the MM1 redesign considers the findings from this research and incorporates the following changes to the form:

- The form is simplified and the question set is reduced.
- The form is used as a behavioural tool as well as a reporting mechanism, to encourage appropriate decision-making among those making the referral. The form includes a decision-making tree to guide those making the referral.
- The form requires supervisors to evidence that they have explored all other options of performance management (conversation, LTR, UPP) before submitting an MM1.
- The form includes detailed guidance (through pop-ups/other digital design features) on the level of detail required in an MM1 form and the criteria for when it is appropriate to submit a formal allegation of misconduct.
- The form allows AAs to record their decision-making rationale for their assessment of the severity of the referral.
- The form undergoes user testing before the design and format is finalised.
- The form is used to support data collection in order to improve our ability to conduct complex statistical analysis of disproportionality, e.g. manual entry of fields where not possible to obtain through automation with other systems (e.g. PSOP). This supports Recommendation 19.

Recommendations for Evaluation

Many of the recommendations outlined above could be supported by high quality evaluation to understand and quantify the impact of system/policy changes on disproportionality, fairness/consistency of decision-making and time taken.

Recommendation 18: Evaluation design must be planned alongside implementation of new initiatives. All too frequently, evaluation is considered after the introduction of an intervention, making meaningful evaluation impossible. The SIU should be consulted at the earliest possible opportunity and can assist with evaluation design.

Recommendation 19: Create consistent and long-term organisational incentives to decrease disproportionality in the misconduct process. This could be achieved by a publicly accountable 3-5 year strategy to measure and evaluate progress to reduce disproportionality in the misconduct process. This must be caveated by the need to use appropriate metrics to do this and that descriptive statistics are insufficient. The SIU are currently developing an appropriate regression model – with MOPAC analysts - which is dependent on the availability of appropriate data covering the variables that could affect misconduct decision-making. Developing this longer term data and analytical strategy could sit under the DPS and be guided by the SIU in terms of the design of appropriate methodology and metrics. The London Race Action Plan could also provide oversight.