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BRITISH TRANSPORT POLICE**

REPORT TO: BTPA Professional Standards Committee

DATE: 26 October 2011

SUBJECT: Proposed Legislative Change - Police Reform and Social Responsibility

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1. PURPOSE OF PAPER

- 1.1 This report provides a summary of the changes proposed under schedule 14 of the Police Reform & Social Responsibility Bill, and the associated changes to the Police (Performance & Conduct) Regulations 2008. These changes are due to come into force in March 2012.
- 1.2 This report looks at two main areas of consideration:
- Professional Standards Department (PSD) procedures in respect of public complaints (recording and investigating).
 - British Transport Police (BTP) procedures for addressing unsatisfactory performance (police staff and officers).
- 1.3 This report also takes into account the draft Home Office guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures and also ACAS guidance in respect of procedures relating to police staff.

2. CURRENT PRACTICE

- 2.1 Misconduct, Public Complaints and Unsatisfactory Performance and Attendance (UPP) are currently recorded on Centurion, the PSD electronic case management system.
- 2.2 PSD is responsible for receiving and ensuring appropriate response to public complaints. Complaints are currently divided into the following categories:
- Complaint against police – special requirements (potential for formal disciplinary proceedings).
 - Complaint against police – non-special requirements (unlikely to attract formal disciplinary proceedings).
 - Direction and control matter – praise, criticism or query regarding force procedure or practice.
- 2.3 Complaints against police are categorised under Home Office codes and allocated to an appropriate investigator to deal with. Special requirements cases are given a severity assessment and dealt with by PSD investigators, while non-special requirements cases are usually referred to Area for local investigation.
- 2.4 Direction and Control matters are not recorded as complaints, but are recorded on Centurion, and are simply referred to an appropriate party to provide a response to the praise, criticism or

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query. There is no obligation to investigate the matter or take any action, and there is no right of appeal for the complainant.

- 2.5 Where PSD consider a complaint could be dispensed with or discontinued, an application must be made to the IPCC who will either approve or deny the request. Similarly, appeals against complaints are currently made to the IPCC for consideration. These processes, whilst taking time to complete, are fully integrated with PSD practice.
- 2.6 Discipline procedures are currently managed and applied by PSD, although the Discipline (Police Staff) SOP is currently owned by HR (Employee Engagement). A working group was recently set up to review this procedure and hand ownership to PSD. Draft documents are currently with the Strategic Development Department for consultation. The redrafted policy documents set out the procedures used more accurately, and provide additional guidance and information for employees and managers.
- 2.7 Action taken under the Unsatisfactory Performance Policy (UPP) for both staff and officers is currently recorded on Centurion, and PSD are now supporting the HRBC in the arrangement of panels for stage 3 UPP meetings.
- 2.8 In relation to attendance, these matters are recorded on Origin as well as Centurion, and are monitored by a sickness management group as well as local management. These matters are also recorded on Origin and are tracked by the HR Performance and Audit Unit.

3. PROPOSED CHANGES IN LEGISLATION

- 3.1 Proposed changes to the Police (Performance and Conduct) Regulations under schedule 14 of the Police Reform & Social Responsibility Bill will enable the IPCC to direct matters to UPP where appropriate. Home Office guidance will also encourage forces to use UPP rather than only considering discipline procedures. Reports into complaints will now have to identify any issues with performance as well as whether there is case to answer or not.
- 3.2 UPP will now be considered a type of formal disciplinary proceeding and can be instigated by the Force or directed to be used by the IPCC.
- 3.3 Under the proposals, complainants will have the right to attend stage 3 UPP meetings for gross incompetence following a public complaint, as they currently do for Level 2 disciplinary proceedings. The IPCC will also have the right to hold these meetings in public if there is a call to do so. The process will also allow for the IPCC to have the power to 'call in' matters being dealt with under UPP where they feel it in the public interest for them to do so.
- 3.4 Under the new proposals there is no separate process for dealing with Direction and Control matters. These are now included in the same process as dealing with complaints about the conduct of an employee. They will be recorded as public complaints, but identified on the record as Direction and Control matters. There will still be no right of appeal against the outcome of any investigation into these matters. As part of this process the definition of

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conduct has changed to “include acts, omissions, statements and decisions” which allows direction and control issues to be deemed a complaint under conduct.

- 3.5 The IPCC will no longer need to seek complainant permission to pass complaints to individual forces.
- 3.6 There will be additional grounds for not recording a complaint received from a member of public. These will be:
- The complaint is out of time
 - Matters already subject of a complaint
 - Anonymous complaint
 - The complaint is vexatious, oppressive or an abuse of procedure
 - Repetitious complaint
 - It is not reasonably practicable to investigate the complaint
 - The complaint received has already been addressed by previous criminal or disciplinary proceedings
 - The matter relates to a Direction and Control issue which relates to a local policing body decision

All non recording appeals will still go to the IPCC. However there is no right of appeal for non recording where the grounds for not recording are that the matter has previously been dealt with by criminal or disciplinary proceedings or relate to Direction and Control instigated by the local policing body.

- 3.7 There are no major changes identified in relation to the handling of complaints. Changes relate to the Local Resolution process and specify that it can only be used if the conduct complained of would not justify the bringing of criminal or disciplinary proceedings against subjects whose conduct is complained of and the Authorised Authority is satisfied that the conduct complained of would not involve an infringement of a persons rights under Article 2 (Right to Life) and Article 3 (Prohibition of Torture) of the Human Rights Act.

There is some confusion in relation to the terminology of Local Resolution, as previously the force has been advised that Local Resolutions would be rescinded. Clarification is being sought from the Home Office.

- 3.8 Proposals are that Force will be able to dispense with a case in the following circumstances:
- The complaint is out of time
 - Matters already subject of a complaint
 - Anonymous complaint

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- The complaint is vexatious, oppressive or an abuse of procedure
- Repetitious complaint
- It is not reasonably practicable to investigate the complaint

This will now be referred to as 'disapplication' and will replace the current dispensation process. If the matter has previously been referred to the IPCC then any application must be referred through the commission.

Where a case involves a senior officer, has been assessed as a special requirement case, or there is a possibility that the conduct complained of may contravene Article 2 or 3 of the Human Rights Act then any appeal against a disapplication decision will rest with the IPCC.

In all other cases the appeal will be heard by the Chief Officer of Police or his representative.

There is no appeal for conduct matters which purely relate to Direction and Control or where the IPCC has granted permission for the matter to be subject to disapplication.

3.9 The Force will be able to discontinue a complaint case in the following circumstances:

- The complaint is out of time
- Matters already subject of a complaint
- Anonymous complaint
- The complaint is vexatious, oppressive or an abuse of procedure
- Repetitious complaint
- It is not reasonably practicable to investigate the complaint

This does not apply if the matter has been referred to the IPCC. In cases that are being supervised or managed by the IPCC any request to discontinue must be referred to the Commission.

Where a case involves a senior officer, has been assessed as a special requirement case, or there is a possibility that the conduct complained of may contravene Article 2 or 3 of the Human Rights Act, then any appeal against a discontinuance decision will rest with the IPCC.

In all other cases any appeal against discontinuance will be heard by the Chief Officer of Police or his representative.

3.10 At the adjudication stage there will be a requirement for the adjudicating officer to not only specify whether there is a case or no case to answer for Gross Misconduct or Misconduct, but must also specify whether the subject's performance was unsatisfactory.

However, there would appear not to be a requirement for the Investigating Officer to include opinion on performance in his final report.

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3.11 Regarding appeals against the outcome of an investigation, the IPCC will hear all appeals where a case involves a senior officer, has been assessed as a special requirement case, there is a possibility that the conduct complained of may contravene Article 2 or 3 of the Human Rights Act, or the case has been referred to the IPCC.

3.12 In all other cases the appeal can be heard by the Chief Officer of Police or his representative.

4. CURRENT POSITION

4.1 The Home Office is engaged in a consultation process at this time. All forces are providing feedback through the ACPO PSD lead.

4.2 The Home Office has initially identified March 2012 as a projected date for the introduction of the new legislation.

4.3 The IPCC are unhappy with certain aspects of the new legislation and are currently in consultation with the Home Office. The IPCC are pushing for a delay in the new legislation until November 2012.

4.4 PSD has instigated a working group to modernise BTP's approach to UPP for police officers and police staff.

4.5 PSD are conducting a scoping exercise to ascertain which processes will need to be adapted to comply with the new legislation and ascertain which support mechanisms (Centurion, corporate forms) need to be upgraded / adapted to support the expected legislative change.

4.7 PSD is working with the BTPA to ensure any changes in legislation are introduced via a seamless process of transition.

5. RECOMMENDATIONS

5.1 That Members note the update provided in response of proposed legislative change.