

# Changing times

Police officers facing a new disciplinary offence of racial misconduct is among one of a raft of recommendations made following a report by the Commission for Racial Equality. Jayne Monkhouse, equality advisor to the Federation, reports on what it means for the service.

The BBC documentary *The Secret Policeman* broadcast in October 2003 revealed racist behaviour among new recruits at Bruce training centre and resulted in 12 of them from various forces resigning from the service and the same number of serving officers being disciplined following an investigation by the Independent Police Complaints Commission. The documentary prompted an investigation by the CRE which reported back its recommendations last month.

The CRE appointed Sir David Calvert-Smith, former director of public prosecutions, Ravi Chand, former Head of the National Black Police Association, Nuala O'Loan, police ombudsman for Northern Ireland, and professor Jagdish Singh Gundara, professor of education at the University of London to investigate the police service under the Race Relations Act.

During the course of their investigation the CRE reviewed 15 force Race Equality Schemes and found that 14 of them were not compliant with the requirements of the Race Relations Amendment Act 2000.

The investigation came almost immediately after the Metropolitan Police Authority had asked Sir Bill Morris to investigate allegations that black and minority ethnic officers were treated worse than their white counterparts in the MPS discipline process, a situation known as disproportionality. The Inquiry extended its investigations to other issues of alleged discrimination and to other forces.

At the same time, the Home Secretary asked Sir William Taylor, former commissioner of the City of



London Police, to review the discipline regulations operating in the service. This was prompted by the widespread belief that it was time consuming and difficult, if not impossible, to dismiss police officers for racist or other inappropriate behaviour.

## Confusing times

All three investigations have now reported. Together they have made almost 300 recommendations. Some of the recommendations overlap, but others conflict, creating a confused situation for those serving in the police.

The CRE report is by far the longest at nearly 300 pages. It addresses the screening, training, managing behaviour and governance arrangements in the police service, and also the operation of the grievance and discipline procedures. The report has 125 recommendations: 30 per cent of them aimed at ACPO, 30 per cent at inspection bodies such as HMIC and the IPCC, 25 per cent at the Home Office and 15 per cent at Centrex and other training bodies.

The investigation took evidence from the Federation nationally and surveyed local Joint Branch Boards, Police Authorities, the senior management team and the Black Police Association in 15 forces. They made follow up visits to some of the forces. They also made a call for evidence from serving or retired officers to speak about their experiences. Altogether they spoke to 88 witnesses.

## Positive lessons

The CRE made no formal recommendations to the Federation, and in fact appear to have taken on board many of our suggestions. They have said that they will be writing to the Federation with some findings and suggest that the staff associations and support groups should work more closely together.

They have praised the Learning the Lessons from the Employment Tribunals Toolkit that the Federation drove forward and launched at conference last May. They also state that they have

adopted the Toolkit's recommendations as their own. These are reproduced in the box below.

Other recommendations that are of significance to serving officers include:

- that officers should have access to "wider employment rights" and "to a non-statutory disciplinary procedure incorporated into their terms and conditions preserving the office of constable".

The Morris Inquiry, and now the CRE have both reached this conclusion, but the Taylor review into discipline concluded that policing was a unique role where officers could be required to undertake certain tasks with life or death consequences for themselves or members of the public – as such, they should be subject to statutory discipline arrangements and not be subject to wider employment rights.

- that the Code of Conduct should be amended in line with the Code of Conduct of the PSNI to include standards of conduct and practice for police officers in relation to discrimination on racial grounds.
- that the Home Office produce a new nationally agreed Fairness at Work procedure, which is assessed for race equality; and that responsibility for dealing with grievances should be independent of the officer's line management.

This represents a fundamental difference of opinion between ACAS, Morris and the Federation on the one hand – who recommend that supervisors should deal with workplace grievances and the

CRE on the other – who are recommending an independent process.

- that chief officers should delegate responsibility to Centrex for disciplinary and grievance procedures at its training centres.
- that officers should be able to make complaints direct to the IPCC.
- that applications to the MPS should be restricted to those who live or have lived in London.

This would ensure that the pool of candidates has a high proportion of BME applicants. The CRE consider that although this could amount to indirect discrimination against white people, who make up a higher proportion of the population outside London, it would be justifiable under the terms of the Race Relations Act.

These issues will clearly be the subject of further debate during the police reform process.

**Learning the Lessons Recommendations**

During 2003 representatives from a number of police service stakeholders met to consider how the service could learn lessons from the Employment Tribunal cases that had been taken against forces in England and Wales. It was felt that without a positive intervention strategy, discrimination would remain institutionalised within the service and cases would continue to be taken; the public image of the service would continue to suffer; the personal and professional lives of officers and staff in the service would continue to be damaged and the service would lose the skills and experience of valuable personnel.

The stakeholders included representatives from the Home Office, the Association of Police Authorities, Her Majesty's Inspectorate of Constabulary, the Association of Chief Police Officers, the Superintendent's Association of England and Wales, the Police Federation of England and Wales, UNISON, the National Black Police Association, the Gay Police Association, the British Association of Women in Policing and the Police Legal Advisors Association.



**The stakeholders made the following recommendations to the police service:**

**Resolution not confrontation**

1. By asking an Employment Tribunal to determine a workplace dispute a force will have failed its workforce. Although people appear before an Employment Tribunal in order to get an acknowledgement that they were right, there are no real winners. Appearing at an Employment Tribunal is a traumatic experience for all concerned, and is costly in terms of money, publicity and careers. Resolution strategies should be tailored to individual needs. There should be a duty on everyone to come to the table to resolve complaints

**Lawyers should advise and managers decide**

2. As soon as the force receives notification from the Employment Tribunal that a claim has been lodged the HR director or assistant chief constable (ACC) responsible for personnel should consider how the complaint could be resolved, or whether it should be resolved. Only when he/she is satisfied that there is no possibility of resolution should the HR director or ACC, after receiving advice from the force solicitor, the force Professional Standards Unit and the force equality advisor, consider the costs, merits and benefits of defending the claim at an Employment Tribunal

**Dutytime for representatives dealing with discrimination**

3. Duty time for staff association representatives should be made available to representatives involved in discrimination issues in the same way that it is currently available to officers acting as a friend under the Police Misconduct Regulations 1999 and in respect of the Health and Safety (Police) Regulations. Fairness and equality issues frequently span misconduct and forces must create an open opportunity to address all matters. This is becoming increasingly important as discrimination issues are extended to encompass not just sex and race discrimination, but also sexual orientation, religion, belief and disability

**Use of the statutory procedures**

4. The Employment Tribunal procedures are designed to aid resolution. The statutory questionnaire procedure, the employer's answer to the allegations of discrimination known as the IT3, and the opportunities to mediate and conciliate offered by ACAS should be used in order to facilitate resolution and avoid a Tribunal hearing

**Dispute resolution regulations**

5. Police Regulations should include similar provisions as those in the Dispute Resolution Regulations 2003 in order to ensure that, like police staff, police officers are required to use their force Fairness at Work procedure and the time limit for lodging a claim at an Employment Tribunal is extended by a further 3 months in order to facilitate an in-force resolution of the complaint

**Force review**

6. The force equality officer should review each completed Fairness at Work complaint or Employment Tribunal case in order to ascertain whether the matter affected just one person or has the potential to affect other people and necessitates a change in policy or procedures. If possible, the complainant, and/or, with the complainant's agreement, their representative, should be interviewed by the force equality officer to identify any learning points from their experience of the procedure. Learning points could include a change of policy or procedure, identification of training requirements, etc. The force equality officer should also, if possible, interview the other people involved in the complaint including the stage managers who dealt with the matter, to identify any learning points from their experience of the procedure. Any learning points and recommendations from the force equality officer's review should be considered with the chief officer and the force legal advisor. The review and its outcomes should be discussed and approved by the Police Authority

**Police authority review**

7. Grievances and Employment Tribunal cases should be monitored and reviewed by the Police Authority in line with the APA guidance *Tackling Discrimination: Police Authority Oversight and Scrutiny of Grievance Procedures and Employment Tribunals*. This would include assessment of the financial impact, as well as the likely impact on trust and confidence in the force in the wider community and on the recruitment and retention of officers and staff

**HMIC review**

8. As part of their inspection of forces, HMIC should review the use of the Fairness at Work procedure and evaluate the decision making process of any Employment Tribunal cases

**Consultation arrangements**

9. Fairness at Work procedural issues should be a standing item on JNCC or other consultation meetings. Networking lessons and good practice

10. Any lessons that are identified and that could have a wider impact on the police Service, for example, by preventing similar practices occurring, should be networked through the Home Office website