The Virdi Inquiry Report

CHAIRMAN
R. David Muir
DECEMBER 2001

THE VIRDI INQUIRY REPORT

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PANEL MEMBERS
Radhika Bynon Panel Member
Sir Geoffrey Dear Panel Member
Lord Navnit Dholakia Expert Advisor
Ahmed Ramiz Observer
Angela Slaven Deputy Chair
Beverley Thompson Observer
Nicola Williams Panel Member

Sue Harper Senior Policy Advisor
Patricia Coney Administrator

DECEMBER 2001

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B Chairman's foreword

Lord Toby Harris Chairman, Metropolitan Police Authority Romney House Marsham Street London SW1P 3PY

30 November 2001

On 31 August 2000 you appoint

On 31 August 2000 you appointed me to chair the MPA's first inquiry into the Metropolitan Police Service case against PS Gurpal Virdi, and to make recommendations to the MPA in respect of lessons to be learned from this case. The case has been lengthy and 'exceptionally complex'.

The case is still not settled; PS Virdi is still not back to work; and for legal reasons the Inquiry Panel have not been able to hear and question PS Virdi in person. Therefore, the Report presented to the MPA should be seen as an interim report on PS Virdi's case for the reasons we state.

There was an opportunity for a settlement to be reached in February after PS Virdi met with the Commissioner. Unfortunately, the legal representatives were unable to reach a satisfactory settlement.

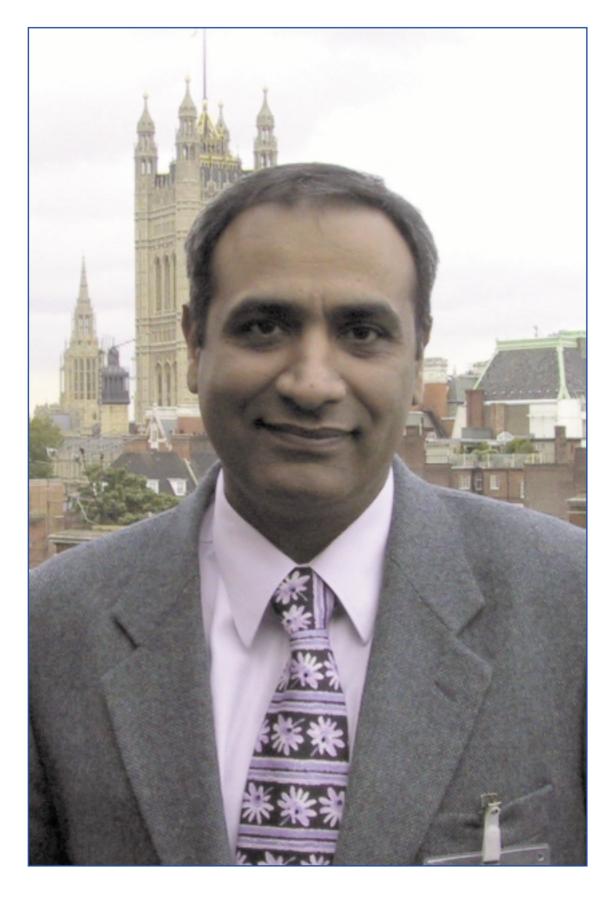
It is clearly in the best interest of PS Virdi, the MPS and the MPA to settle this case as a matter of urgency.

In fulfilling my task I have had the privilege of working with a team of seven very able and experienced Panel members. I want to express my appreciation to Sue Harper, Senior Policy Adviser to the Inquiry, and Patricia Coney, Administrator, for their sterling work.

Yours truly

R. David Muir

Chairman



C Introduction

Gurpal Virdi joined the MPS on 10 May 1982. In September 1992 he moved to Ealing Division, where, in November 1992, he was promoted to Sergeant.

On 24 December 1997, 13 officers, including PS Virdi, received racist literature. On 19 January 1998, a number of civil staff received separate racist literature. It appeared that the literature had been generated and sent via the internal mail system. During the investigation that followed a female white officer, PC Batchelor, was questioned and eliminated from the inquiries. On 15 April 1998, PS Virdi was arrested for offences of distributing racist hate mail. The Crown Prosecution Service subsequently decided not to proceed with criminal charges, but on 7 February 2000 PS Virdi appeared before a police disciplinary tribunal. On 3 March 2000 he was found guilty and dismissed from the Metropolitan Police Service.

PS Virdi took the Metropolitan Police Service to Employment Tribunal and on 23 August 2000, the Tribunal found that he had been discriminated against on the grounds of his race. PS Virdi subsequently appealed against the decision of the disciplinary tribunal and on 30 November 2000 he was reinstated. At the time of writing this report he has not returned to work.

On 1 September 2000 the Metropolitan Police Authority (MPA) announced that an Inquiry would be set up and R. David Muir, an MPA member, was appointed to chair an Inquiry Panel.

Members of the Panel and their advisors spanned a wide range of disciplines and have had to rely heavily on their individual experience as the facts were often difficult to establish.

The flow chart at figure 8 illustrates the complexity of this case and the series of events that were unfolding simultaneously and in ways that frequently only served to confound or constrain a reasonable response. At no stage were these developments mutually helpful or harmonious. Some things were matters of fact and are not disputed. Some other issues were challenging and the facts remain unclear often

because the parties involved were unable to speak frankly in case they compromised future hearings.

This was not an Inquiry to re-examine or re-investigate events. At times it was difficult to maintain this balance. We had no direct powers as it was set up under Section 111 of the Local Government Act 1972 and contributions to the Inquiry had to be made voluntarily. Sometimes this was freely given, other times less freely. Our brief was to draw lessons from the totality of PS Virdi's experience and that of the Metropolitan Police Service. It is fair to say that PS Virdi was as much concerned with the length, bureaucracy, and lack of proportionality of the procedure as he was about being investigated.

Notwithstanding the fact that we did not have the power to require evidence, we were dismayed that we could not give the necessary assurances to PS Virdi to allow him to attend the Inquiry and give his evidence personally. On 19 September 2001 he jeopardised his legal position by providing a written submission to ensure that Panel members heard his views. He gave the Panel permission to use any part of his written submission in the report, even if to do so could compromise his legal position in the event of future proceedings. The MPS has adopted a more cautious stance in the face of ongoing litigation.

We found ourselves walking in Gurpal Virdi's footsteps over much of this ground. We were seriously concerned that the culture of the MPS and its attendant bureaucracy tended to slow down and obfuscate matters despite our best intentions. We also considered that PS Virdi's interests were not best served by the Commission for Racial Equality (CRE) during critical stages of the settlement due to inefficiency in responding to important legal correspondence.

The culture in police forces varies. The bigger the force, the greater the tendency to bureaucracy and to guard its back. We were concerned and disappointed that the dictum 'you are only as good as your last mistake', which encouraged individuals to play safe and play according to the rules, still prevails.

Whilst we appreciate the need for rules and procedures, in an organisation such as the MPS where rules abound they often serve to prevent effective outcomes. This is compounded by the drafting of the Police (Conduct) Regulations 1999 which themselves display the same tendency. In short, there is little opportunity for common sense, reasonableness or for seizing the opportunity to employ a flexible exit strategy. There is a bureaucratic tendency to concentrate on minutiae.

There needs to be a rationalisation of the rules to prevent unnecessary bureaucracy.

It was not in our terms of reference to reinvestigate the case. We make no comment on the quality of the investigation but we were concerned by the fact that it was conducted at local level (i.e. area) and not from the centre, given the sensitivity of the issues raised. There were no reviews carried out during the investigation; the objectivity of the investigation was not examined; and at no time was an opportunity for an exit strategy explored and no challenge made to question timescale and cost. PS Virdi's house was searched by a specialist search team (POLSA) for no less than seven hours and the appropriateness of conducting such a search, indeed any search, is questioned. The lack of support for PS Virdi and other staff involved was an area of great concern to us.

We were mindful of the fact that this process was unfolding whilst evidence was being heard by the Inquiry into the death of Stephen Lawrence. PS Virdi also gave evidence to the Lawrence Inquiry. The MPS may well have sought to demonstrate that justice was being done and being seen to be done, but with hindsight it may be concluded that they over reacted in terms of the length and depth of their investigation into the case against PS Virdi.

The unresolved nature of the case and the outstanding second Employment Tribunal case prevented us from a detailed examination of the processes of the Discipline Tribunal and Employment Tribunal. We have some sympathy with these bodies which were faced with the

frustration of adjudicating within two distinct regulatory frameworks.

The fact that the Regulations at the time (and still do) create a Tribunal structure that effectively rules out (by under-representation of minority groups at senior levels) a hearing before a group of like-minded people; and the fact that those same Regulations actually preclude the support of families at the hearing is quite unacceptable.

There needs to be a grievance procedure which inspires trust and confidence. Concerns raised by staff throughout the Inquiry tended to paint a picture of an organisation that, despite having procedures in place, appeared to have little interest in their staff.

The Panel were concerned about the apparent position of the Directorate of Legal Services. All police forces use lawyers. Many chief officers accept the advice of their lawyers but retain the right to differ, recognising that in doing so they must bear the consequences. We were concerned that in our assessment of this case the involvement of the MPS Directorate of Legal Services appeared to drive the process into a more litigious and lengthy approach than may have been necessary. We understand that the reporting lines have now been changed and we hope that this may lead to improvements and a more responsive service.

The Employment Tribunal reported its Reserved Findings in August 2000 but did not make an award to PS Virdi at that time. In December the Employment Tribunal Remedies Hearing awarded PS Virdi a total of £149,688 in compensation for injury to feelings and aggravated damages for the 'high handed' way the MPS behaved towards him both at the time and promulgation of the decision. The Tribunal Chair was critical of the fact that the MPS had not taken the opportunity to resolve matters with PS Virdi between the announcement of the Reserved Decision in August 2000 and the Remedies Hearing in December 2000. It is no surprise, therefore, that we were alarmed at the length of time it has taken to conclude this matter as at the time of writing this report (October 2001) PS Virdi is still not back to work.

Is the public interest best served by such delays? Notwithstanding the personal involvement and commitment of the Commissioner in February 2001, when a meeting was held and a public apology issued by the Commissioner to PS Virdi (even though he was not Commissioner at the time the original incident took place), the legalities were apparently allowed to intervene causing us to question, very seriously, whether the MPS, as it presently operates, can manage and influence events at an acceptable pace.

Our concern still remains that despite having taking so much longer than any of us would have wished, indeed anticipated, it has still not been possible for the key witness, PS Virdi, to offer his evidence in person and to be questioned by us. In that respect we fully accept that it remains a contentious decision as to whether this report should be published at this stage. We were, however, able to draw conclusions from PS Virdi's written statement and the evidence presented to us. We have also identified issues with much wider implications for the MPS and the police service generally and believe that these findings need to be reported without further delay so that action may be taken. When matters are concluded between the MPS and PS Virdi we would wish to hear his evidence and publish a supplementary report.

D Executive Summary

On 1 September 2000, the Metropolitan Police Authority announced that an Inquiry would be set up to examine the MPS case against PS Virdi and the Employment Tribunal findings in relation to the MPS discipline board.

A Panel was appointed and set about reviewing the considerable documentation associated with the case. The Panel received written and oral submissions from MPS staff, people from other organisations who had had dealings with the case and individuals who had expert knowledge of the issues concerned. During the course of the Inquiry the Panel were linked into ongoing developments within the MPS, other police forces, the Home Office and the Employment Tribunal Service to ensure that its final recommendations took account of change in policy and practice, given that the original distribution of hate mail took place in December 1997.

The Inquiry was set up under Section 111 of the Local Government Act 1972. It had no powers to require people to attend or to demand documentation. The original reporting timescale (publication of the report in July 2001) was extended to October 2001 in an attempt to allow matters between PS Virdi and the MPS to be resolved to the point where any outstanding civil litigation could be concluded. Regrettably, at the time of completing this report, November 2001, that position had not been achieved and for that reason the Panel were unable to hear PS Virdi's submission personally as such action may have compromised the respective parties in the event that civil action was continued.

Other officers, particularly those involved in the original investigation, also felt unable to present their submissions personally as there was always the potential for a new police investigation into the original events (as indeed is now taking place under the supervision of the PCA). These factors placed a considerable challenge on the Panel.

The Panel were, however, able to form the following conclusions:

1 Original Investigation

Despite the legal constraints, the Panel were able to use the documentation and their own expert knowledge to conclude that the original investigation should have been managed more closely by the centre given the sensitivity and complexity of the case. The Panel concluded that the use of a specialist search team (POLSA) in the search of PS Virdi's home was excessive. It was also concerned about the treatment of staff and witnesses, particularly those officers and civil staff based at Ealing, some of whom (including PS Virdi) had been the recipients of hate mail.

2 Discipline Investigation and Tribunal

The Panel were most concerned about the time taken to take this case to a Disciplinary Tribunal Hearing. It recognised that the Regulations used then (and indeed the new revised Regulations) applied mechanistically can, at best, result in bureaucracy, considerable workload and cost both personally and financially. At worst, institutional racism can be detected in its processes and procedures in disadvantaging ethnic minority groups.

3 Police Federation

Regulations provide facilities and arrangements for the Police Federation to which all officers of federated rank belong. If local Joint Branch Boards are not staffed by a representative number of minority groups there is the potential for staff from minority groups to lack trust and confidence in the support they receive. Other associations providing support to minority groups, such as the BPA, do not have the same facilities as are granted to the Police Federation.

4 Employment Tribunals

The Panel were concerned about the way cases progressed to employment tribunal. It was felt that the processes used within the MPS removed local involvement and the potential for early resolution of cases using a legalistic rather than personal approach to conflict resolution. Some devices used to slow down the process were

identified as unhelpful. The Panel believe that the MPS stance of adherence to rules and procedure often discouraged the admission of honest mistakes. This stance invariably leads to the instigation of disciplinary action. In the attempt to develop a 'learning organisation' such practices certainly militate against it.

5 Grievance

The Panel recognised that healthy organisations receive grievances and deal with them fairly. Whilst the MPS have a grievance procedure they, in common with many other police forces, find that staff have little trust and confidence in the process. This is attributed partly to the 'blame culture' where staff fear that their careers may suffer if the process is used; and partly because all too often the grievance procedure timescales are not complied with because disciplinary action is involved and the procedure is drawn out by the attendant bureaucracy.

6 Public Relations

Reporting of this case has lead to considerable bad feeling by PS Virdi, the MPS, staff and the community in general. As the Panel were not given access to view the MPS press file on this matter, conclusions were difficult to draw (see Appendix 13a and 13b). However, it is very clear that this was a major factor in determining the award made to PS Virdi by the Employment Tribunal.

7 Trust and Confidence

Unlike the Report into the death of Stephen Lawrence, which focussed on external trust and confidence, this Inquiry has been concerned mostly with trust and confidence of the staff of the MPS. Whilst it has not always been possible to establish the full extent to which trust and confidence in the Metropolitan Police Service has been damaged by this case, there is no doubt that staff within the MPS have been affected by the criticism attached to the service. Many feel, and quite rightly point out, that they are being judged today on an event that took place four years ago, arguing that much has been done internally since then. That said, this report highlights that there is

little trust and confidence in relation to the internal handling of disciplinary and grievance matters.

8 Organisational Learning

We highlight a perceived culture of blame, mechanistic compliance to regulations, a discouragement of admitting mistakes and of saying 'I'm sorry'. Whilst discipline is appropriate in cases of misconduct, the organisation and the police service has to find a way to learn from its mistakes; and where necessary pay the price, say 'I'm sorry' and move on. Support and training may be more appropriate sanctions. 'Reasonableness' as determined by employment law, the use of common sense and proportionality, seem to be missing from the Regulations and are constraining a service which is seeking to improve and treat its staff as a 21st Century 'employer'.

Recommendations are produced in Section I.

E Setting the Scene

1.0 The Metropolitan Police Service

1.1 The Service in 1997

In writing this report in 2001 it is right that we should register the fact that the first of the hate mail letters were sent in December 1997, fourteen months before publication of the Report into the death of Stephen Lawrence.

At that time, Sir Paul (now Lord) Condon was Commissioner. In 1997 the 'London Beat' was published and he wrote:

'These are enormously exciting times to be policing in London. Although the demands are great, the challenges are stimulating and rewarding. London's population is becoming increasingly diverse, demands on our resources are rising and the public have high expectations of us. Success in the future will depend on our having the right people, doing the right things in the right way.'

The London Beat

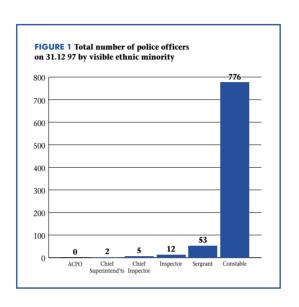
Metropolitan Police Service Statement of Our Common Purpose and Values

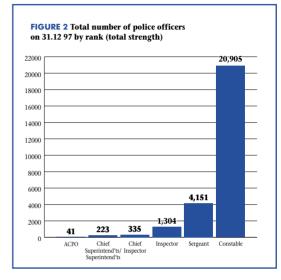
'The purpose of the Metropolitan Police Service is to uphold the law fairly and firmly; to prevent crime; to pursue and bring to justice those who break the law; to keep The Queen's Peace; to protect, help and reassure people in London; and to be seen to do all this with integrity, common sense and sound judgement.

We must be compassionate, courteous and patient, acting without fear or favour or prejudice to the rights of others. We need to be professional, calm and restrained in the face of violence and apply only that force which is necessary to accomplish our lawful duty.

We must strive to reduce the fears of the public and, so far as we can, to reflect their priorities in the action we take. We must respond to well-founded criticism with a willingness to change.'

The London Beat





1.2 Staffing Profile – whole force

On 31 December 1997, the total police establishment was 26,960; of this number 4,151 were sergeants. The percentage of officers from visible minority ethnic groups was 3%. The percentage of sergeants from visible minority ethnic groups was 1%.



1.3 Ealing Borough

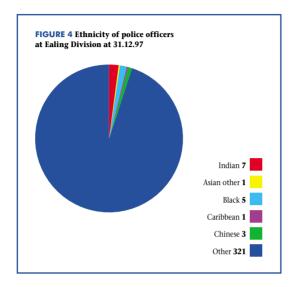
Ealing is situated in West London (see figure 2).

In 1991 the population of Ealing Borough was 263,600. It has a large minority ethnic population compared to the national average and London as a whole. Estimates for 2001 made by the London Research Centre suggest that approximately 39% are from a minority ethnic group. It is the second largest of the outer boroughs after Brent.

The 1991 Census shows the proportion of different ethnic groups were as follows:				
67.7% White	4.4% Black Caribbean			
1.6% Black African	1.1% Black Other			
16.1% Indian	2.7% Pakistani			
0.3% Bangladeshi	0.9% Chinese			
2.7% Other Asian	2.6% Other			

At that time, policing of the borough was undertaken by 338 police officers, supported by 105 civil staff.

The MPS advised that in 1997 they did not record ethnicity by rank. Of the total officers on the Division the MPS advised the Inquiry that there were a total of 17 police officers from groups other than white (5%.)

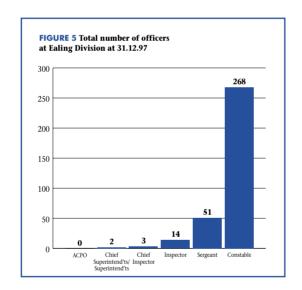


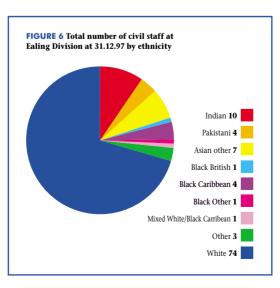
PS Virdi refers to himself as 'being the only ethnic supervisor'1 (see figure 4)

At this time the 105 civil staff were recorded as being from the following groups – 31 from groups other than white 30% (see figure 6).

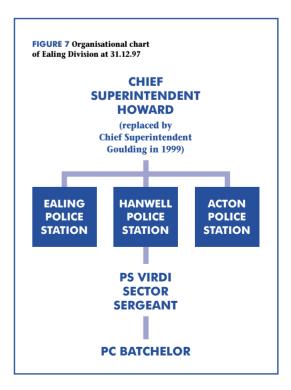
Ealing Division was managed as shown in accordance with the organisational chart shown at Appendix 1.

Operational policing was carried out from three police stations at Ealing, Hanwell and Acton. PS Virdi was a supervisor on one of the sectors working as part of a uniform team. He was based at Hanwell Police Station.





1 Written submission from PS Virdi dated 19 September 2001



1.4 Police Sergeant Gurpal Singh Virdi

The Panel are keen to remind readers that at the centre of this case is one police officer standing alone, Police Sergeant Gurpal Virdi. The Panel commissioned a number of pen pictures to understand more about this central figure. These are reproduced at Appendix 2. The pen pictures are from the following:

- a PS Virdi
- **b** The Metropolitan Police Service
- c Inspector Bahra (Welfare Officer to PS Virdi)

The responses differed in style and content, and as such make interesting reading. For the purposes of a summary the following factual details have been extracted:

- PS Gurpal Virdi is forty three years old and was born in Delhi, India. He is married and living with his wife Sathat and their two children, a daughter aged 13 years and a son aged 10 years. He lives in Middlesex, which is geographically situated within the boundaries of the London Borough of Hounslow.
- He came to the United Kingdom at the age of eight; he attended schools in the West London area and subsequently attended college. Since leaving full time education he has taken part time courses in industrial management, counselling, sign language and first aid. He is currently studying for a degree.
- His first full time employment was with a leading pharmaceutical company based in Brentford, Middlesex, in sales management. Whilst working there he joined the special constabulary and served for three years at Heathrow Airport.
- PS Virdi joined the Metropolitan Police Service on 10 May 1982. After completing his initial recruit training in September 1982, he was posted to Battersea Police Station where he served as a uniformed constable until May 1985. He then became a member of the Metropolitan Police District Crime Squad based at Putney and later at Battersea. This involved plain-clothes criminal investigative work. In April 1987, he was selected to join SO11, Directorate of Intelligence.

- He was promoted to Police Sergeant in September 1992 after which time he served on Ealing Police Division. His duties before he was suspended included supervising officers in one of the Division's sectors working as part of one of the uniform teams, being employed as the supervisor within the control room and as a custody officer.
- PS Virdi is actively involved within the community; he makes time for charity work and for the local school where he has been a school governor for many years.

1.5 A Chronology of Events

This section is intended to provide an overview of the key events over the four year period between the first hate messages being received to publication of the Inquiry Report.

1.5.1 Overview

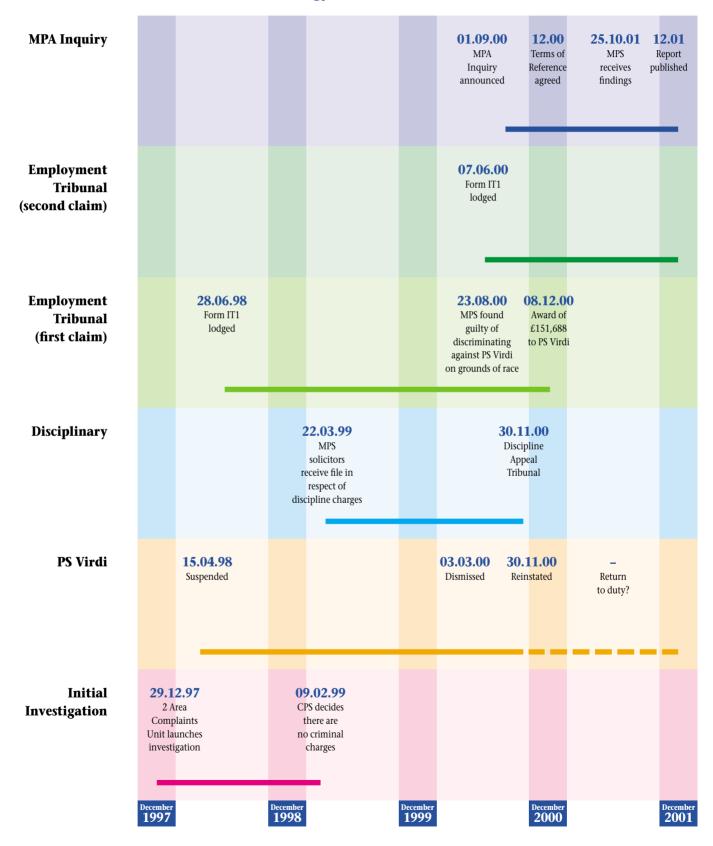
One of the most difficult aspects of this case has been the fact that processes have been overlapping throughout the four year period. During our Inquiry this caused difficulties in the receiving of evidence. The table at 1.5.2 is intended to show, in a diagrammatic form, the complexities and inordinately long timescales associated with this case.

Sections 1.5.3 to 1.5.5 have been produced as an overview of the key events. They indicate the respective dates and a summary of the event or action taken. Alongside each entry is a cumulative total of days that have elapsed from the receipt of the first hate mail on 24 December 1997:

- 1.5.3 identifies the key activities within the initial investigation
- 1.5.4 identifies the key activities within the disciplinary process
- 1.5.5 identifies the key activities within the employment tribunal process



FIGURE 8



1.5.3 The Case Against PS Virdi – Initial Investigation

Cumulative total of days from first hate mail receipt (shown to the left of each date in colour)

- 24 Dec 1997

First racist document is received by officers from minority ethnic groups who work at Ealing Police Station. A total of 132 were sent, including one to PS Virdi.

5 29 Dec 1997

Ealing Senior Management requests an Investigating officer from 2 Area Complaints Unit. DCI Bone appointed.

Daily Mail Newspaper item – 'Race hate campaign'

6 30 Dec 1997

Back up tapes at Ealing seized.3

9 02 Jan 1998

Ch Supt Howard emails and sends personal letters to all victims.

13 07 Jan 1998

Ch Supt Howard emails all staff on update of investigation.

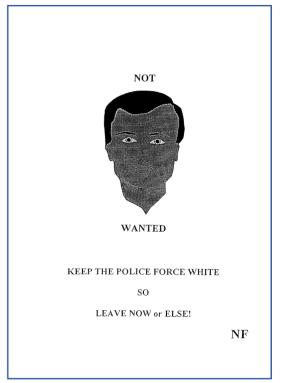
25 19 Jan 1998

Second racist document is received by civil staff from minority ethnic groups at Ealing Police Station.

PC Noden, the Computer Systems Administrator at Ealing, identifies the MPS logo used in the second document as one he had created on the OTIS (Operational Technology Information System) system and believes the second document was originated on the OTIS account of PC Batchelor and printed on the printer at Hanwell Police Station on the 18 January 1998.

26 20 Jan 1998

Derek Walton, Forensic Science Support unit, commences his work on the computer evidence.



FIRST HATE MAIL



MEMO

You are ordered to leave. You have no right to be here.

NF

SECOND HATE MAIL

2 See the statistics provided by the MPS on the total number of minority ethnic staff at Ealing in 1997 (section 1.3)

3 See entry on the 25 March 1998

27 21 Jan 1998

Ch Supt Howard sees PC Batchelor as her line manager with agreement of the Investigation officer. Ch Supt Howard advises her she is not a suspect. The meeting is not recorded.

33 27 Jan 1998

PC Batchelor is interviewed under caution (taped) by PS Beswick (2ACU) (at her own instigation)

54 17 Feb 1998

Press strategy options paper agreed. Later used by Commander Gilbertson – release ethnicity of suspect on an 'if asked' basis.

62 25 Feb 1998

Request made to place covert cameras at Hanwell Police Station.

64 27 Feb 1998

Conversation between Ch Supt Howard and PS Virdi – covertly taped on advice from I.O.

89 24 Mar 1998

PC Batchelor is interviewed under caution (taped) by Ch Insp Hards from 2ACU.

90 25 March 1998

ACPO Good Practice Guide⁴ (Good Practice Guide for Computer Based Evidence) issued

111 15 April 1998

PS Virdi is arrested.

Operation led by Ch Insp Hards takes 23 hours.

POLSA search of PS Virdi's home takes 7 hours.

113 17 April 1998

PS Virdi interviewed under caution (taped) and denies any connection with the document.

153 27 May 1998

File submitted to the CPS requesting advice on prosecution.⁵

185 28 June 1998

PS Virdi instigates Employment Tribunal proceedings.

187 30 June 1998

Mr. Bates, an external computer specialist, is asked to examine the seized computer equipment from Ealing Police Station.

285 06 Oct 1998

PS Virdi is again interviewed under caution.

298 19 Oct 1998

File submitted to CPS.

411 09 Feb 1999

CPS decision - No criminal charges.6

1.5.4 Disciplinary Hearing

Cumulative total of days from first hate mail receipt (shown to the left of each date in colour)

453 22 Mar 1999

File of evidence on PS Virdi sent to MPS Solicitors for Counsel's advice in respect of discipline charges.

489 27 April 1999

Date of discipline hearing set for 6th September 1999 with four weeks set aside.

491 29 April 1999

PS Virdi informed by Ch Supt Goulding of date of hearing and supplied with a copy of charges to be preferred against him.

526 03 June 1999

Discipline papers served on PS Virdi at his home address.

609 25 Aug 1999

Letter from Russell Jones & Walker (Solicitors) seeking adjournment of hearing as their computer expert was not ready.

616 01 Sep 1999

Agreement to adjournment by the MPS.

4 ACPO Guide for use in the police service as a guide for good practice when dealing with evidence. Not in use at the time the computer equipment was seized at Ealing.

5 See entry at 9.2.99

6 Letter from CPS dated 10 July 2001 explaining the reasoning for this decision is attached at Appendix 3

639 24 Sep 1999

New date of hearing is set for 7th February 2000 for four weeks.

671 26 Oct 1999

Pre-hearing is set for 15th December 1999 to deal with any submissions.

721 15 Dec 1999

Pre-hearing is held.

775 07 Feb 2000

Discipline hearing is convened.

799 03 Mar 2000

Discipline Hearing concludes. PS Virdi is dismissed from the Service on eleven charges and reprimanded on three charges.

802 05 May 2000

Transcript and outcome served in writing to Russell Jones & Walker and PS Virdi.

870 02 June 2000

PS Virdi set out his Grounds of Appeal.

970 21 Aug 2000

Draft response received from MPS Solicitors.

972 23 Aug 2000

Employment Tribunal finds that the Metropolitan Police Service had discriminated against PS Virdi on the grounds of his race.

995 15 Sep 2000

MPS response to Grounds of Appeal served.

1000 20 Sep 2000

Appeal to Commissioner hearing set for 6 October 2000 after consideration of dates to avoid for all parties and Russell Jones & Walker informed.

1006 26 Sep 2000

Letter received from Russell Jones & Walker stating that PS Virdi cannot now make the Appeal Hearing of 6 October.

1041 31 Oct 2000

Date of Appeal Hearing set for 30 November, Russell Jones & Walker informed.

1071 30 Nov 2000

PS Virdi is successful in his appeal against the Disciplinary Tribunal (not contested) and is reinstated to the MPS.

1.5.5 Employment Tribunal Process

Cumulative total of days from first hate mail receipt (shown to the left of each date in colour)

185 28 June 1998

PS Virdi lodges application with Employment Tribunal Office (ITI)

188-919 Between July 1998 - July 2000

Six Direction Hearings take place – mainly awaiting the outcome of internal processes

921-925 3-7 July 2000

928-929 10-11 July 2000

935-936 17-18 July 2000

Interim Decision of Employment Tribunal (see 4.5)

937-946 19-28 July 2000

951-952 2-3 August 2000

958 9 August 2000

Reserved Decision of the Employment Tribunal (see 4.5)

1076+ 5-8 December 2000

1079 Remedy Hearing (see 4.5)

2.0 The Metropolitan Police Authority

2.1 MPA Inquiry

On 1 September 2000, the MPA announced that an Inquiry would be set up to inquire into the MPS case against PS Gurpal Virdi and the Employment Tribunal findings in relation to the MPS Discipline Board.

R. David Muir, an independent member of the MPA, and chair of the Authority's Consultation, Diversity & Outreach Committee, was appointed to chair the Inquiry.

2.2 Panel Members

Panel members were appointed from a wide range of backgrounds and experience. They included:

Angela Slaven, Deputy Chair Radhika Bynon Sir Geoffrey Dear QPM Nicola Williams Lord Navnit Dholakia, Expert Advisor Ahmed Ramiz, Observer Beverley Thompson OBE, Observer

(Brief Biographical Data of Panel members are at Appendix 4)

Local Government Act 1972

Part VII Miscellaneous Powers of Local Authorities

111 (1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal or any property or rights) which is calculated to facilitate or is conducive or incidental to, the discharge of any of their functions.

For the purposes of this section, a police authority is defined as a local authority.

2.3 Terms of Reference

Terms of Reference of the Inquiry were agreed as follows:

To inquire into the MPS case against Mr Gurpal Virdi and the Employment Tribunal findings in relation to the MPS Discipline Board, focusing particularly on:

- **a)** examining the assumptions made, methodology employed, and conclusions reached in the original investigation;
- **b**) examining the regulations which govern and influence MPS disciplinary proceedings, the processes for critical review of investigations and their implications for future disciplinary and employment tribunal proceedings;
- c) making recommendations to the MPA in respect of lessons to be learned from this case and actions to be taken in the MPS to restore public trust and internal confidence in the police service particularly around grievance and discipline;
- **d)** towards this end to receive evidence from interested parties and individuals, which will contribute to the Inquiry achieving its Terms of Reference.

R. David Muir, Chairman (December 2000)

2.4 Conduct of the Inquiry

The Inquiry was set up under Section III of the Local Government Act 1972 and as such it had no power to require people to attend or to obtain documentation. The Inquiry did, however, obtain significant documentation and obtained written and oral submissions.

2.4.1 Roles and responsibilities of all the Panel members were determined (copies at Appendix 5). Protocols for the conduct of Panel meetings were agreed as were protocols to be adopted by Panel members who met and spoke to people outside formal Panel meetings (copies at Appendix 6).

2.4.2 Relevant documentation

The Panel members read a significant amount of documentation supplied by the MPS and other bodies including:

- Statements taken for the Disciplinary Hearing
- Transcript of the Disciplinary Hearing
- Statements taken for the Employment Tribunal
- Findings of the Employment Tribunal
 - Interim Decision
 - Reserved Decision
 - Remedies Hearing
- Police (Discipline) Regulations 1985
- Police (Conduct) Regulations 1999
- Employment Tribunal Rules
- Annual Report MPS and other forces
- HMI inspection report
- HMI publications
- Reviews and project reports internal MPS documents

2.4.3 Submission from staff

MPS staff were invited to send written submissions via

a an item placed in The Job

ride the rails Issue 948 MPA invites Virdi views

- **b** personal letters forwarded to all officers involved in the original investigation or who had been called as witnesses to the disciplinary tribunal and/or Employment Tribunal. (Copy attached as Appendix 7)
- c a visit to Ealing Police Station by the Chair of the Inquiry who invited staff to come and speak without the need for a formal appointment

2.4.4 Consultation with Staff Associations

A Focus Day was held in February. All staff associations/staff groups within the MPS were invited to send a representative. Members of the Panel facilitated a group workshop to obtain views of staff on procedural matters and trust and confidence internally.

2.4.5 Consultation Externally

34 PCCGs were invited to submit comment for consideration by the panel.

A number of organisations/institutions were invited to provide a written submission or to attend a panel meeting.

2.4.6 Other Forces

All other metropolitan police forces were approached and invited to provide details in respect of grievance and employment tribunal management.

2.4.7 Leading Bodies

A number of leading bodies were approached to obtain information in regard to good practice, existing requirements and any proposals for change e.g. ACAS, CIPD, Employment Tribunal office, ACPO, APA. A meeting was held with two of Her Majesty's Inspectors of Constabulary.

2.4.8 Metropolitan Police Service

Senior managers within the MPS were approached. Some were asked to provide written details of policies, statistics or staffing matters. Others were asked to attend a Panel meeting to update members on the work of their department or to advise on Police Regulations.

Some staff asked to provide their submission personally to the Panel and, where appropriate, their comments have been included.

2.4.9 Commission for Racial Equality

The Commission for Racial Equality represented PS Virdi at his Employment Tribunal. The solicitors in the case presented oral and written evidence to the Inquiry.

2.4.10 Statistical Details

A summary of the responses and submissions to the Inquiry is detailed below.

Total Panel meetings: 23

Total number of Panel meeting papers: 186

Wrote to: **141** individuals/bodies and received **68** responses

Total of **33** visitors to Panel meetings to provide personal submissions or to provide advice on procedural matters within the MPS and the police service generally.

F Findings: procedural

3.0 Disciplinary Matters

3.1 Discipline within the Metropolitan Police Service in December 1997

Constables hold office under the Crown. They are not employees, but are Servants of the Crown. Their 'conditions of service' are laid down in Statutory Instruments and can only be amended by legislation.

At the time of the original incident (December 1997), the arrangement for police officer discipline was determined by the Police and Criminal Evidence Act 1984 (PACE). Statutory Instrument 518 and the Police (Discipline) Regulations 1985 were in operation. The Regulations were reviewed and changed in 1999, but the date of the original incident determined that PS Virdi's case was dealt with under the 1985 Regulations.

These Regulations set out how investigations should be carried out, how charges should be formed, arrangement for hearings and if necessary appeal against findings.

The Police (Discipline) Regulations 1985 required charges to be proven 'beyond reasonable doubt,' the criminal burden of proof.

To assist in understanding the events of this case, the following sections of the Regulations are important:

1 Section 12: Election to be legally represented

Where the officer responsible for formulating charges against a member of a police force in pursuance of Regulation 8 is of opinion that there should, on a finding of guilt, be available any such punishment as is mentioned in sub-paragraphs (a), (b) and (c) of Regulation 24(1), viz

- Dismissal from the force
- Required to resign
- Reduction in rank

he shall, on the copy of the discipline form served on the member, give the member an opportunity to elect, in the manner prescribed therein, to be legally represented at the hearing.

2 Section 18: Procedure at Hearing

- The accused shall be ordered to attend at the hearing of the case.
- The hearing shall be private:

Provided that it shall be within the discretion of the officer conducting the hearing to allow any member of the Authority, any solicitor or any such member or members of the police force as he considers desirable to attend the whole or such part of the hearing as he may think fit, subject to the accused or his representative not objecting to the attendance of the person or persons in question.

3 Section 22: Attendance of Complainants at the Hearing

- This Regulation shall apply in relation to the hearing of a charge against a member of the police force where the charge is in respect of a complaints matter.
- Notwithstanding anything in Regulation 18(2) but subject to paragraph (4), the officer conducting the hearing shall allow the complainant to attend the hearing while witnesses are being examined or cross examined on the facts alleged in the charge and if he considers it appropriate so to do on account of the age of the complainant or otherwise shall allow him to be accompanied by a personal friend or relative who is not to be called as a witness at the hearing.

4 Section 23: Finding

- The officer conducting the hearing of a charge shall, at its conclusion dismiss the charge or find it proved.
- A charge shall not be found proved unless it is
 - admitted by the accused; or
 - proved by the officer presenting the case to the officer conducting the hearing beyond reasonable doubt.
- The said decision shall as soon as possible be recorded on the discipline form and notified in writing to the accused.

3.2 The Case against PS Virdi

3.2.1 Complexities of the Case

It is appropriate to remind readers of the immense difficulty facing the Panel in establishing the full picture in regard to the initial investigation and subsequent disciplinary process. The overlapping processes described in 1.5 were an issue throughout the entire process.

PS Virdi had lodged a second Employment Tribunal claim against the MPS on 7 June 2000. This claim was in respect of the disciplinary process used by the MPS. This claim remained live throughout the MPA inquiry. This position affected the Panel's ability to hear submissions from parties involved in the disciplinary process, as can be seen from Commander Cullen's evidence:

'On the advice of both the Solicitor for the Metropolitan Police Service and my own Solicitor it would be inappropriate for me to comment on the disciplinary tribunal in detail whilst Virdi's second Employment Tribunal is proceeding.'

Commander Richard Cullen, President of the Disciplinary Tribunal, evidence submitted to the Panel on 4 April 2001

This was also highlighted by Chief Superintendent Goulding who stated:

'A difficulty throughout this process, is that the case is still ongoing, either sub-judice because of judicial proceedings or unresolved whilst settlements are negotiated. Because of these constraints, I have been unable to disclose all details to community partners and internal staff.'

In addition, documents relevant to this second ET were either not available to the Panel or limited in their use and therefore not allowed to be referred to in the final report.

Whilst parties involved in the case from the side of the Respondent were advised to be cautious in their responses to this Inquiry, PS Virdi (the Applicant in the second Employment Tribunal cases) was advised by the Panel that any submission to the Inquiry might compromise him in regard to this case. The Panel had very much expected that PS Virdi and the MPS, along with their respective legal advisers, would have arrived at a mutually acceptable position to allow PS Virdi to give his evidence to the Panel, as well as allow

the Panel to use legal privileged documents provided by the MPS. The inability to arrive at such a position, and the implications of the second employment tribunal, has meant that PS Virdi was unable to appear before the Panel, providing us with a written statement instead. Equally, legal privileged documents supplied to the Panel to inform its consideration of the case cannot be referred to while the second employment tribunal case is outstanding.

This first overlapping process was further complicated by the fact that the MPS were considering reinvestigating the case. Whilst this information was not shared with the Panel until the report was near completion, DAC Hayman wrote on 5 October 2001 to confirm the decision of the MPS to hold an internal investigation:

I am writing to address the questions posed by members under your heading 'further inquiry'.

I instructed a paper review of the internal investigation into the circumstances that led to Mr Virdi facing a disciplinary hearing. In my opinion, the findings of the paper review justify an internal investigation into that investigation. I have attached a copy of the terms of reference. (Appendix)

Due to the concerns expressed by Mr Virdi I felt it appropriate that the matter be voluntarily referred to the PCA for supervision.

It is not clear how long this investigation will take to conclude as it is dependent on the outcome of Mr Virdi's debrief of the matter.

Dep. Asst. Commissioner A. Hayman, 5 October 2001

It is possible, however, that officers within the MPS were aware of this eventuality. The officer in charge of the investigation, Chief Inspector Hards, together with DI Beswick and Sgt McKenzie, made a brief written submission to the Inquiry via a solicitor. This document has not been included in this report because the Panel were of the belief, from documentation received throughout the Inquiry, that these officers were wary of the

possibility of a re-investigation. Such a re-investigation has indeed now been instigated.

This section, therefore, seeks to concentrate on factual detail of the main areas of contention and, where appropriate, views and opinion of the Panel are included based on their personal knowledge of procedure.

3.2.1 The facts

- 1 The first race hate mail letters were received on 24 December 1997.
- 2 PS Virdi was suspended on 15 April 1998 (112 days after the initial incident).
- **3** The Disciplinary Tribunal Hearing commenced on 7 February 2000
- 4 PS Virdi was found guilty of the 14 charges made against him on 3 March 2000, eleven of which concerned the circulation of two series of racist documents, the first on 24 December 1997, and the second on 19 January 1998. Three additional charges related to property found during the search of PS Virdi's home address on 15 April 1998.
- **5** He was dismissed from the office of Constable on 3 March 2000 (after 4 weeks of the Disciplinary Tribunal Hearing)

3.2.2 Representation

PS Virdi was represented by the Police Federation.

The Police Federation gave me minimal support. My federation representative was chosen for me by Commander Gilbertson who was in charge of the Inquiry...

D I Michael⁷ was not concerned with my guilt or innocence he was more concerned about my welfare as was Insp Diljit Bahra.

PS Virdi written submission, 19 September 2001

the Black Police Association (BPA) at the time.

7 DI Michael was Chair of

- 8 PC Batchelor, a female officer based at Ealing Division was initially a suspect in this case and was later used as a comparator visà-vis PS Virdi's treatment as a subject in the ET Case
- **9** Operations Technology Information Systems

3.2.2 Initial Investigation

The initial investigation was carried out by 2 Area Complaints Unit. The original investigating officer DCI Bone was later replaced by DCI Hards. PC Batchelor⁸ was seen 'informally' by Ch Supt

Howard, with the agreement of the investigating officer. She was later interviewed under caution as a result of her volunteering to be interviewed. PS Virdi was not interviewed until his arrest on 15 April 1998. The investigation was centred on the computer evidence.

3.2.3 Computer Evidence

PC Paul Noden was the Ealing Division computer system administrator. He recognised the MPS logo on the second batch of letters as clip art he had created on OTIS⁹. He was tasked with searching the system for evidence of a suspect creating the document within the system.

Whilst the actions taken to secure computer evidence were later criticised, the Panel recognised that PC Noden acted in the absence of any specific guidance in this regard. These actions are now explicitly covered by guidance issued by ACPO on 25 March 1998, three months after the initial action taken. PC Noden's actions were supported by Derek Walters, a computer scientist from the Forensic Science Support Unit, who assisted the investigation from January, and Jim Bates, an independent computer expert who gave evidence at the Disciplinary Tribunal.

Michael Turner, an independent computer expert, was unhappy with the actions of PC Noden and later gave evidence at the Employment Tribunal (but not at the Disciplinary Tribunal). When asked why Mr Turner had not been called to give evidence at the Disciplinary Tribunal, PS Virdi advised the Panel:

I had no say in the matter... when I argued I was told that the Police Federation was the client and not I... After the disciplinary hearing Mr Turner contacted me through the Hounslow Law Centre, we met and he gave me a totally different account of the facts, it was then that I figured out that the Federation were not helping me but were covering up the truth.

PS Virdi written submission, 19 September 2001

In the opinion presented to the Employment Tribunal Mr Turner asserted that:

The methods used by the police to investigate the allegations were based on invalid, unscientific and untested forensic techniques...

The computer evidence does not link Sergeant Virdi with either set of racist letters

beyond reasonable doubt.

The computer evidence does not link Sergeant *Virdi with either set of racist letters*

on the balance of probability.

Submission of Michael I L Turner MA. FBCS. FCIArb, MAE, MEWI, to the Employment Tribunal

3.2.4 The POLSA Search

A search of PS Virdi's house was carried out on 15 April 1998. This search was carried out by specially trained officers in accordance with police (POLSA) procedures. It took seven hours to complete. Enquiries made with the MPS have failed to determine further information to ascertain whether there were precedents for the POLSA search of police officers houses during internal investigations.

A reply from the MPS stated:

'In short, regrettably, the information you seek is not readily available, and for the reasons set out above, impractical to obtain'10

The Panel concurred with the view of the Employment Tribunal in that 'the use of the POLSA team was excessive and unwarranted'. This decision was based on the:

- Panel's view of proportionality;
- A written submission to the Inquiry:

' As a police inspector with over 26 years service I have never known a search team under a Police Search Advisor to be used to search residential premises except in cases of terrorism offences."

• experience of one of the Panel Members, a former Chief Constable and former HM Inspector of Constabulary.

10 Extract from letter from the MPS dated 13 June 2001. See Appendix 8.

11 Name of the officer supplied to the Inquiry

3.2.5 Care of Witnesses/Effects on colleagues

The Panel received much information regarding the effect of this case on staff within the MPS, particularly at Ealing. The actions of Ch Supt Howard in keeping staff informed met criticism by the senior officers involved in the case, but he was praised at the Employment Tribunal. The Panel concurred with the view of the Employment Tribunal that the actions of Ch Supt Howard were those of a caring manager. Ch Supt Howard attended a Panel Meeting and provided a written submission. He stated:

'Specifically, I would also add that though there was some sterling work done by (some) ACPO and the local Area Press Officer in presenting the MPS case to the media, there was no management support to any staff involved who were subject to pillory in the media both before any hearing and after.

I am not aware of anything other than the minimal support being offered to any staff. There was certainly no support in countering any of the malicious allegations being aired in the press (the ET specifically refuted many of them in their judgement)...

My personal interest in this aspect of the matter is obvious and I make no effort to disguise that fact that I feel, as an individual, I was treated unfairly.'

Ch Supt Howard, written submission to the Inquiry, 27 February 2001

The Chair of the Panel visited Ealing Police Station and met staff willing to share their views. It is fair to say that the views expressed differed between strong support for PS Virdi, on the one hand, to disbelief, on the other hand, that the Employment Tribunal found a 'different finding' to that of the Disciplinary Tribunal.

However, there was unanimity amongst all parties in regard to the following:

a the matter had been ongoing for far too long;

- **b** there had been a lack of support from the most senior of officers, within the MPS for staff at Ealing;
- c there had been mixed messages or no message at all in respect of the MPS's position and reasons not to prosecute PS Virdi.

3.2.6 The Disciplinary Tribunal

As stated at 3.1 the disciplinary case against PS Virdi was conducted in accordance with the Police (Discipline) Regulations 1985. As such, it is a judicial proceeding governed by statutory regulation and is subject to judicial review.

The Panel comprised Commander Richard Cullen (President), Commander Graham James and Commander Alan Shave.

Commander Cullen attended a Panel Meeting and provided a written submission, but due to ongoing aforementioned ET proceedings he was constrained in his ability to answer fully. He was very open, however, in his frankness over the choice of officers to sit on this Tribunal which was recognised to be a difficult and challenging case. There were virtually no volunteers for the role.

There is much debate concerning the lead up to this Tribunal Hearing and the role played by the MPS's Independent Advisory Group (IAG). The IAG was established in January 1999; it comprises 30 members from a range of professional and cultural backgrounds.

Its Terms of Reference are:

To advise and make recommendations to the MPS through the Director of the Racial and Violent Crime Task Force on

- Reviewing and improving the investigation of and prevention of racist crime
- Creating an Anti Racist Police Service
- The handling and resolution of Critical Incidents
- Improving the trust and confidence of London's diverse communities in their Police Service
- Any other aspect of policing which impacts upon the minority ethnic communities

In autumn 1999 a letter was received from Mr and Mrs Virdi, bringing their case to the attention of IAG. The Chair of the IAG met with Mr and Mrs Virdi who requested that the IAG observe the Hearing.

The case of PS Virdi was raised in January at a meeting of the IAG. The IAG were advised by senior officers of overwhelming *evidence against PS Virdi;* and the chairperson of the IAG was mandated to raise the case with the Commissioner. The Commissioner advised that he could not become involved in the case given his role as the appellate authority. The IAG chairperson was advised, therefore, to speak to Commander Cullen.

The Panel recognised the conflicting perspectives of the evidence presented by the chairperson of the IAG and that of Commander Cullen. The IAG, given their Terms of Reference, believed they should have been permitted to observe the proceedings. In addition, they felt that Mrs Virdi should have been allowed to accompany her husband.

IAG Perspective

The composition of the disciplinary panel itself must reflect diversity and take into account the issues under consideration.

Clearly, the MPS must have a fair, impartial, and transparent disciplinary process which enjoys the confidence of all its staff.

'Beyond Words' the report of the MPS IAG – final report on the case of Gurpal Virdi, June 2000

Commander Cullen based his concerns about the IAG's requests to observe the proceedings, and for Mrs Virdi to accompany her husband to the hearing, on the Regulations. The provisions of the Regulations do not accommodate the type of request made by the IAG. (See section 3.1 Procedure at a Hearing.)

Metropolitan Police Perspective

Virdi's Counsel, Counsel for the Presenting Officer and the Legal Assessor all agreed that to admit the IAG was 'ultra vires', in layman's terms beyond the power of the Tribunal. IAG attendance was only allowed after Virdi, through his Counsel, stated that he would not use their attendance as ground for judicial review or appeal.

Written Submission by Commander Cullen presented to the inquiry panel on the 3 April 2001

During some acrimonious exchanges, and involvement of very senior officers, the defence counsel challenged the position of Commander Cullen sitting as President. Eventually the IAG were permitted to observe the proceeding and subsequently submitted a confidential report to the MPS outlining their observation and concerns. Mrs Virdi was not allowed to accompany her husband into the Hearing for the four week period. PS Virdi maintains that

'During the same period there was a white officer facing disciplinary action, his wife and daughter were allowed in'12

The Panel recognised the dilemma here. There is no denying the human right of an individual to be accompanied by people they trust, and for the process to recognise cultural difference. That said, Commander Cullen was working within the confines of Regulations that did not, and still do not, recognise such sensitivities.

During the four week Hearing, attended by three Counsel (one for the Presenting officer, one for defence Counsel and one to advise the Board) a pre-trial bundle of 500 pages was considered; 51 witnesses presented their evidence and Commander Cullen took nearly 400 pages of long hand notes. At the conclusion he told the Panel:

'That on the evidence my colleagues and I heard, Virdi was guilty of each of the charges to the level of proof required in criminal cases, that is 'beyond reasonable doubt' or 'so that we were sure'. My two Board member colleagues and I are still satisfied that on the evidence we heard we have no doubt whatsoever that Virdi was guilty of each charge. The evidence for the Presenting officer was overwhelming, whilst the defence was shallow and shifted its stance from witness to witness. There was no defence evidence called to challenge the evidence of the 'computer expert witness' called by the Presenting officer'.

Written Submission by Commander Cullen presented to the inquiry panel on the 3 April 2001

Of the Disciplinary Tribunal PS Virdi states:

The Board was not independent, they only wanted to hear what suited senior management, and they were both prosecutors and judges. The decision was made to sack me before the hearing commenced.

[The hearing] paid no attention to evidence or Human Rights and was stressful for my family.

PS Virdi written submission, 19 September 2001

Several written and verbal approaches were made to the MPS to seek an estimated cost for this disciplinary process. The MPS confirmed that they did not (and still do not) record and maintain this type of information.

3.3 Changes to the Disciplinary **Process for Police Officers Police (Conduct) Regulations 1999**

The Panel were aware that the Disciplinary processes used throughout PS Virdi's case were replaced in 1999. It was considered necessary to review the changes to establish the difference between the old and the new Regulations. In what way would they have changed matters in this case? Have the changes made any difference to management of discipline within the police service?

12 Written submission by PS Virdi 19 September 2001

3.3.1 Summary of Changes

The Home Affairs Committee report on the police disciplinary procedures in 1998 raised questions on the effectiveness of procedures:

- Officers clearly involved in wrong-doing appeared to go unpunished
- Low proportion of complaints found to be substantiated following an investigation
- Increase in civil actions against the police
- Widespread public dissatisfaction

The Home Affairs Committee 1998

The Home Affairs Committee concluded that 'the system was not working as well as it might'; it emphasised the need for procedural reform and made 43 recommendations. These recommendations were later endorsed by the Report of the Inquiry into the Death of Stephen Lawrence (1999). The Report states: 'Police complaint and disciplinary procedures are inadequate both to ensure effective management and to command public confidence'.

FIGURE 9 The main stages of the Police (Conduct) Regulations 1999 **INCIDENT INFORMAL SANCTION REFERRED TO PSD REGULATION NOTICE SERVED INVESTIGATION INVESTIGATION REPORT** CRIMINAL PROCEEDINGS OFFICER CHARGED INFORMAL SANCTION **TRIBUNAL** FORMAL SANCTION **REVIEW** APPEALS TRIBUNAL

In response to the Home Affairs Committee, the Home Secretary announced plans to reform the disciplinary procedures. The Police Conduct Regulations, implemented in April 1999 incorporated six main changes.

Summary of the Changes -The Police (Conduct) Regulations 1999

- A reduction in the standard of proof at disciplinary hearings (to the standard of balance of probabilities);
- A change to the seniority of officers required to preside over hearings (reduction in rank);
- New fast track procedure for cases where there is clear evidence of serious misconduct:
- A look at conduct setting out the standards of behaviour expected from police officers;
- Written warnings for dealing with less serious incidents at a local level;
- Separate procedures to deal with poor performance.

3.3.2 What differences would these changes have made to the case involving PS Virdi?

3.3.2.1 Would the process have been carried out differently?

Figure 9 indicates the main stages of the Police (Conduct) Regulations 1999.

It can be seen that the process remains largely unchanged. Given the severity of the charges against PS Virdi (which would have been formed under breaches of the new Code of Conduct) the stages in the process in pure procedural terms would not have been substantially different.

This view is reinforced by comments made by Paul Quenton (Home Office PRCU) who concluded:

- On the whole, the officers interviewed for the study viewed the new misconduct procedures in negative terms. There was a widespread perception that they were a mechanism for dismissing officers, rather than a tool for reducing misconduct. In general, operational officers were also insecure about, and distrustful of, the investigative process.
- The length of time taken to conclude cases and the perceived lack of communication during the process were key concerns for operational officers. Both were seen to be unaffected by the new misconduct procedures and were the cause of much resentment.

Overall, the research shows that the new misconduct procedures have had relatively limited impact. The findings of this study serve to remind both policymaker and the police of the entrenched nature of the challenges faced in reforming the disciplinary system

An Evaluation of the Police Misconduct Procedures - Police Research Paper Dec. 2001

3.3.2.2 Would the hearing have been heard by a panel from a minority ethnic background?

Whilst the number of senior officers from minority ethnic groups is increasing, the number of officers of the required rank to chair a Board still make the selection of a Board comprising representatives from minority groups most unlikely.

These new Regulations still preclude an opportunity for working outside the mechanistic framework of the Regulations. Encouragement for 'stepping outside of the box' of narrow thinking which encourages 'exclusive inclusion of likeminded people" in the constitution of Hearings¹³ is still not an option.

3.3.2.3 Would the Tribunal Hearing have taken place much more quickly?

The research carried out by Paul Ouenton has revealed that there is little difference in the timescales associated with the new procedures.

'There was provisional evidence of improvements in the time taken to conduct cases although this was not strongly supported by practitioners.'14

3.3.2.4 Could PS Virdi have been represented differently?

Representation of police officers is governed by section 22 (2) of the Police (Conduct) Regulations 1999. This states:

'the member concerned may conduct his own case either in person or by a member of a police force selected by him or, if he has given notice in accordance with regulation 17, that he wishes to be legally represented by counsel or a solicitor.'

There is no mention of the term 'federation friend'. The role of the federation friend is defined in the Police Personnel Procedures Handbook issued by the Police Federation of England and Wales. It is normal for an officer facing misconduct proceeding to approach the local Joint Branch Board Office seeking support.

The Panel noted that it is not normal practice for a federation friend to be appointed by the force, as stated by PS Virdi.

Once a friend has been appointed they would normally undertake liaison between the officer, the force and, if necessary, the Police Federation's legal advisors. In most cases, Russell Jones & Walker provide this service.

The Regulations, Home Office Guidance, and the Police Federation's own guidance, make no mention of taking into account any issues which may arise due to an officer's race, colour, gender, sexual orientation or religion.

Police Federation friends are usually indemnified by the national organisation. (They are covered by insurance in their role as friend. The cost of this insurance cover is met from members' subscriptions.) To achieve this they must be a member of, or have served on, a Joint Branch Board as an elected representative.

This, of course, does not prevent an officer facing misconduct proceedings asking any officer to support them in the role of a 'friend'. However,

13 Sir Herman (now Lord) Ouseley, MPS The Diversity Strategy: A Review May-October 2000

14 The Diversity Strategy

unless the above conditions applied to such a 'friend' they would not be indemnified.

The Panel noted that:

- a the new Regulations do not change the position in respect of representation as experienced by PS Virdi
- **b** whilst it was not possible to ascertain the percentage of minority ethnic members of the Joint Branch Board in the MPS (figures not maintained), experience of the Panel indicated that this figure was not high.
- c other support groups, e.g. the Black Police Association (BPA) do not have the same facilities as granted to the Police Federation under the Regulations and do not have the same indemnity provisions to support their colleagues.

3.4 Changes to the Misconduct **Arrangement with the Metropolitan Police Service**

The Panel invited comment from MPS staff. The advertisement in The Job (MPS internal newspaper)15 prompted officers to speak of their perception of the process in written submissions to the Inquiry. Names were supplied to the Inquiry team, but have been omitted from the Report.

'Were a criminal offence investigated so slowly I would suggest it would become an abuse of the process and would not reach a court of law'

Inspector

'The Police Federation is reluctant to back ethnic officers when complaints of racism are made'

Constable

'If an ethnic officer complains he is more likely to be ostracised by his colleagues. His supervising officers will try any method to discipline the ethnic officer. Bad reports are written... cases withdrawn...'

Constable

'The level of competency is of crucial importance. Throughout my service I have found a lack of understanding of direct and indirect racism, let alone institutional racism. In fact post Macpherson, there has been a 'reaction' and I perceive that officers from minority groups are often over scrutinised. I also sense that on occasion, because officers are aware of the potential problems that could be encountered, they become 'blinkered' and seek to prove the case, rather than seeking the truth.'

Chief Inspector

The discipline process now needs radical surgery. Perhaps only a truly and totally independent investigation will be the only way to restore public trust. I know police officers would welcome it in the knowledge issues and grievances would be subject to a fair, balanced and hopefully speedy process.'

Inspector

At the Focus Group meeting of all staff groups held in February 2001 the following issues were raised and have been grouped into themes of concern:

More support is needed from senior officers to line managers and supervisors

- Further training is required for supervisors – procedure is now in place but there is insufficient understanding of when it should be applied
- Middle managers feel they will be found guilty, especially if allegations are to do with race
- Support geared toward the alleged 'victim' - but support needed for 'accused', often a manager
- Managers face dilemmas when dealing with discipline/ET/ grievance - clear guidance needed to empower managers to act robustly
- Supervisors fear of criticism often lead them to refer matters upwards rather than deal with them themselves
- The consequence of the blame culture means that the organisation are dealing with minor issues
- There is insufficient time to deal with 'personnel issues' at an early stage. Consequently, Borough Commanders find themselves dealing with issues at disciplinary tribunals which might have been prevented by early intervention.

The Regulations need to be applied in a more 'reasonable' manner

- Tendency to use discipline to avoid dealing with a minor problem as a safe option against later criticism
- Less support for officers who make an 'honest mistake'
- Onus is on an individual to 'prove their innocence'
- More liaison is needed with staff associations at an early stage of potentially serious or high profile cases to encourage their assistance and support for the process
- Employ discretion to internal processes there needs to be a human face to mechanical rules
- The process is not case sensitive it is like a switch, it is either on or off
- Formal action is taken too readily
- There is a lack of proportionality in investigation and use of discipline leading to 'over investigating'
- Needs to have an exit strategy **Complaints Procedure**

Issues for the Professional Standards Department

- Selection for investigation of complaints should be a 'career move' not a sanction
- Skills pool for those undertaking investigation to allocate the right person to a particular job
- Lack of independent investigation
- Staff move into Professional Standards Dept. because 'it is the thing to do' and not because they have the requisite skills to do the job
- Advice needed on how to deal with internal 'hate mail'

Support Staff Disciplinary Procedure

- Delegated discipline procedure for support staff is not as effective now it is devolved:
 - Boards not independent
 - Line Manager Chairs

Are not representative of the group concerned (accident if minority ethnic is involved)

The Deputy Assistant Commissioner responsible for the Professional Standards Directorate, Andy Hayman, attended a Panel Meeting and provided an overview of changes made within the MPS that would be used if a similar case as that of PS Virdi were investigated in the future. He followed this with a written summary which is reproduced below:

'The area complaints units are now merged into the DPS¹⁶ structure and benefit from being able to draw from a wider range of skills and resources across the command. This is further complemented with all DPA investigating officers now being trained to the national senior investigating officer standard.

'It is recognised that given the size of London there is a need to achieve greater consistency of working practice but at the same time not inhibiting local creativity or innovation. A set of corporate standards has been drafted which provide a framework from which all officers within the DPS will comply. This will create a more consistent approach to investigations and empower local innovation. This will also benefit those being investigated and complainants. A further feature is the reduction of bureaucracy. For example, some processes have been reduced from having up to 15 stages to 5 stages.

'A pan-London DPS training needs analysis is soon to be completed which will give us an even more accurate analysis of the training needs which exist amongst both civil support staff and police staff. During the latter part of 2001 a training programme will be introduced to meet these training needs.

'Investigating officers now use decision logs within their investigations. This provides an audit trail which can be scrutinised by supervisors and by future

misconduct hearings to understand the thought processes that have led to various investigative decisions. The investigating officer will be required to record the investigative strategy and the reasons and rationale behind the decisions.

'Victim care is an integral part of an investigation. Borough Support staff are being trained as family liaison officers.

'The reporting of wrongdoing policy has been introduced as an investigative tool to uncover unethical and practice wrongdoing. This supports the creation of an environment across London which is intolerant of unethical behaviour.

'Performance review and individual case conferencing are now an integral part of intrusive style management by senior staff. This should not be seen as an overbearing management style but given the critical nature of the DPS business the more intrusive style of supervision and management is needed to ensure that any problems are nipped in the bud at an early stage to avoid them becoming the focus for future litigation or unnecessary investigations.

'The use of independent oversight panels, challenge panels and Gold¹⁷ reviews have been introduced to the DPS command to ensure that critical challenge is part of our culture and that contributions from others are valued by investigation teams. It is important these contributions are demonstrable in the investigation plan. In summary, the DPS is creating a culture where investigating officers and the senior management team value the views of others during critical times of an investigation.

'The learning which has been extracted from the Virdi *Investigation is the basis for an aide memoire check* list (see Appendix) which has been issued to all DPS investigating officers. This is intended to assist them when forming their investigative strategy.'

16 Directorate of Professional Standards

17 Review by senior staff

During the last inspection of the force, Her Majesty's Inspectorate of Constabulary commented:

'The Inspection of the complaints and discipline function coincided with the introduction in October 2000 of the new directorate of professional standards (DPS). The new directorate mirrors the removal of the Area structure and draws together CIB 1, 2 + 3 and Area Complaints Unit under a single command. The structure delineates operation and investigation from discipline and civil actions. Her Majesty's Inspectorate is pleased to note that, while the new structure is still in its infancy, new corporate investigative standards have been introduced. This had led to standardisation of procedure and can only be a positive move towards improved corporacy...'

HM Inspection Report of the MPS 2000

The HMIC report concludes:

There has been some very positive development in the management of complaints and discipline: The MPS is congratulated on the performance achieved to date and Her Majesty's Inspector looks forward to further improvements'.

HM Inspection Report of the MPS 2000

4.0 Employment Tribunals

4.1 Background

Employment Tribunals were introduced in 1971 as a non-litigious way of resolving employment disputes intended to be inexpensive, informal and speedy. Membership of Tribunal Panels comprise a Chairman, appointed by the Lord Chancellor (barrister or solicitor of seven years standing) with two lay Members bringing experience of work related problems. There is no legal requirement for either the applicant or respondent to have legal representation although increasingly this is becoming the trend. Evidence is presented under oath or affirmation and a finding made is on the balance of probabilities. Most cases are heard at Employment Tribunal offices. It is like a court but

it is not formal, for example, nobody wears a wig or gown. However, like a court it must act independently and cannot give legal advice. Almost all hearings are open to the public. There is an Appeal to the Employment Appeal Tribunal (EAT) on

- i a point of law
- ii that no reasonable Tribunal could have reached the decision based on the evidence

4.2 The Right to Take a Case

Staff have a right to make an application to an Employment Tribunal if they believe they have been treated unfairly. Such matters may include unfair dismissal, redundancy payments, wages and terms of conditions of employment. In these cases the member of staff will have to have been employed for over 12 months. Applications may be made in relation to sex, race and disability discrimination without a need for a minimum period of employment. In most cases applications should be made within three months (less one day) of the incident(s) complained of.

A member of staff can apply for a hearing without informing their employer and they do not have to wait for internal processes to take place or conclude. Upon making application, the employer is required to make a formal response and ACAS receives copy correspondence to try to help the 'applicant' and 'respondent' reach an agreed settlement. There is no charge for this process. The Tribunal is not normally informed of letters and discussions with ACAS. If the claim is settled with the assistance of ACAS, the tribunal makes an order stopping the case without the need for a hearing. The agreement can be enforced in the County Court if either party fails to honour it.

4.3 Proposed Changes to the Employment Tribunal Process

The Secretary of State for Trade and Industry has published proposals for changing the present system. Proposals which are out for consultation, to be introduced within the next two years include:

- i all organisations to have dispute resolution procedures in place
- ii claimants to be charged for using ET systems (exemption for those on benefit and in cases of genuine need)
- **iii** awards will be increased against employers and reduced for staff if either party has not used internal grievance procedures
- iv there will be a limited extension to the time limit for lodging claims where an internal disciplinary or grievance procedure is still in play – in order to increase the chance of early resolution
- v a fixed period of consideration will ensure both parties make every effort to come to a settlement

The CBI believe that these new proposals will help curb what it calls an 'out of control' system driven by a 'compensation culture'.

'They should reduce the continual spiral of claims without threatening anyone's right to justice. This is not preventing people from pursuing legitimate grievance, it is about avoiding unnecessary cases.'

John Gridland - Deputy Director General CBI

4.4 Trends in the use of Employment Tribunals

The number of claims has more than tripled over the past decade from 43,243 to 130,408 and the rate of growth is increasing. Since 1998 there has been a 42% increase in the number of claims lodged¹. The costs have been spiralling too. Last year the system cost £52 million to administer, excluding the cost of compensation payouts.

The Employment Tribunal Office has reported the following number of applications received

	1998/99	1999/00	2000/01
All claims	91,913	103,935 13% increase	130,408 42% increase (since 1998)
Race discrim. ²	2,746	3,246	3,429
		18% increase	25% increase (since 1998)

4.5 The Case – Gurpal Singh Virdi and the Commissioner of Police of the Metropolis

PS Virdi lodged his first Employment Tribunal Claim against the Commissioner³ on 28 June 1998.

The Tribunal Hearing did not commence until 3 July 2000. Between lodging the application and July 2000 six Direction Hearings took place. They were mainly to determine process pending the outcome of internal processes (see comment of Mrs Hill at 4.6).

The Tribunal announced an Interim Decision after listening to evidence on 3-7, 10-11, 17-18 July 2000.

At the Hearing the Applicant, Mr G. Virdi, was represented by Counsel appointed by the CRE. The Respondent, the Metropolitan Police Service, was also represented by Counsel.

An examination of the findings for the Interim Decision is shown at figure 10.

The Tribunal announced findings in relation to computer evidence only.

Unanimous decision of the Tribunal:

- i the evidence emanating from the computers and the experts on the computers should be dealt with as a discrete point;
- ii the Respondents had reasonable grounds for their belief that the documents identified on the OTIS System as being the relevant racist documents were those documents; and
- iii the Tribunal finds on a balance of probability that the documents identified as being the relevant racist document by the Respondent were, in fact, those documents.

- **1** Employment Tribunal Service Annual Report 2000/01
- **2** As determined by the ETS as the principle type of claim when first received.
- **3** The Commissioner is named as the respondent as he is vicariously liable for the actions of his officers.

An examination of the findings Interim Decision

FIGURE 10

Work undertaken by

19.01.1998

PC Noden System Administrator Ealing Police Station

Description of work/ Expert opinion

Following 2nd set of racist hate mail PC Noden recognises the crest as one he had designed and created on the OTIS system – then in use by MPS and in use at Ealing, Hanwell and Acton.

Agreement of Chief Superintendent Howard closes the system and sought to measure the byte size of documents and compare with print log.

Finds 15 documents created on PC Batchelor's machine of a similar size.

Work undertaken by

20.01.1998

Mr. Walton Forensic Science Support Officer

Description of work/ Expert opinion

Finds server contamination following work undertaken by PC Noden and cannot conduct 'imaging'.

Decided to rely on systems event log and print log records.

2 separate batches of printing were identified.

- 1. Documents produced by (user) PS Virdi between 3.59 + 4.04 on 24.12.97
- 2. Documents produced by (user) PC Batchelor between 7.06 + 7.12 on 18.01.98

Employment Tribunal Findings

'Mr. Node clearly set out his enquiry with no preconception as to what he might discover.'

'he had no idea that his actions in trying to recreate the relevant letter on the system might actually contaminate the records already held by the system.'

'The assumption that he made – that the documents were produced in a single session, printed shortly before distribution, created within Ealing division and would have been written on WORD® – were all, in the Tribunals view, reasonable assumptions to make in order to have a working hypothesis and to test the hypothesis.'

Employment Tribunal Findings

'Tribunal was satisfied that Mr. Walton was a scientist who approached the matter in a scientific way.'

'The system produced answers that Mr. Walton concluded were beyond co-incidence.'

'Mr. Walton conceded that he wished he had used the imaging technique on the server but the basic problem would still remain – that there was contamination of the system.'

Work undertaken by

June 1998 Mr. Bates – independent expert

Expert opinionAppointed by MPS to acc

Description of work/

Appointed by MPS to act as 'auditor' of the work of PC Noden and Mr. Walton and identify if any gaps or defects in information provided.

Employment Tribunal Findings

'Mr. Bates approached the work from a slightly different angle but again all the lists he carried out led him to the view that it was beyond the degree of chance that documents set up in the same way with the same limited potential could produce the print runs in the way they did... unless they were the racist documents'

Work undertaken by

Mr. M. Turner – independent computer expert

Description of work/ Expert opinion

- 1. because the tests cannot be reconstructed on other machines they should not be acceptable at all.
- 2. documentation reconstruction technique used by PC Noden was new, not tested and not published in journals.
- 3. criticism of way work was carried out contamination of system by PC Noden 'enthusiastic but ill informed' attempts at document reconstruction.

Employment Tribunal Findings

- 2. 'Tribunal did not accept that argument. In new field such as computer forensics it is clearly in order to meet new demands'
- 3. 'There appears to be no dispute about this – information on the server had been contaminated as it would contain traces of Mr Noden's experiments'

The tribunal went on to sit on 3-7, 10-11, 17-28 July 2-3+9 August 2000.

On 23 August 2000 the Employment Tribunal announced its findings:

- i the Interim Decision of 18 July 2000 should be reviewed
- ii in the light of new evidence heard, the Tribunal does not believe on a balance of probability that the print runs of 24 December 1997 and 18 July 1998 were the runs of racist hate mail
- iii the Respondents discrimination against the Applicant on the grounds of his race
- iv direction in relation to matters arising to be held on 18 October 2000.

Employment Tribunal Findings

Reserved Decision FIGURE 11

Subject Area Employment Tribunal Finding

1 Credibility of key witnesses

a PC Addison 'We did not find PC Addison to be a credible witness – he demonstrated a remarkable

degree of casualness towards accuracy of his testimony to both investigators and

Tribunal.'

presented as malleable. She is clearly capable of being led into giving certain answers.'

c Ch Inspector Hards 'Presented as a "man on a mission". He consistently said he had kept an open mind in

the investigations and that PC Batchelor had remained a suspect throughout the time up until September when she was advised that she was no longer a suspect. However,

the documentary evidence does not support that assertion'.

'We therefore conclude that Mr. Hards, as an investigating officer, did not go into the case, which he thought to be cast iron against PS Virdi, based on the computer evidence without querying a number of flaws which we have identified and which were

clear at the time of his investigation. His evidence was honest but limited in value'.

d Ch Supt Howard 'Mr. Howard presented as a good man-manager. He was concerned about his staff. His

e-mails which were so criticised by DAC Purnell and Commander Gilbertson presented to the Tribunal as being good management practice to keep in touch with people who had been the subject of racial crime. The subject of those e-mail, whilst apparently continuing information about the way the investigation was being conducted, in fact contained no more information than the average layman would work out to be

reasonable matters for the enquiry'.

'He acted as directed by the investigators as regards the taped interview'.

e DAC Purnell 'His evidence was largely that he was the strategic manager only. Not the day to day

manger of the investigation, and on a number of matters he was not aware that

actions had or had not been taken'.

f Commander Gilbertson 'He was exceedingly critical of Ch Supt Howard'.

'He appeared to have a more 'hands on' approach than DAC Purnell'.

'Despite coming onto the scene midway through the investigation, he did not appear to

have conducted any independent review of the evidence to date'.

'Commander Gilbertson presented as a person who did not have a clear understanding

of the fact that suspects, regardless of the crime, still have human rights'.

g Gurpal Virdi 'PS Virdi presented as a genuine but angry person... overall we found PS Virdi to

present as a credible witness'.

2 Events of the 24.12.97

Findings as to facts as to PS Virdi whereabouts.

'Decided on a conflict of evidence whose evidence we prefer, namely PS Virdi sequence of events compared to that of PC Addison'.

3 Events of the 18.01.98

'The issue of credibility has to be considered in relation to the ability of PS Virdi to print these documents. He would need to use rubber gloves and tweezers, potentially in full view of people looking though the window or entering from either side of the section office. The degree of risk in such an action does not tally with description of PS Virdi's character. Overall we find PS Virdi a more credible witness than PC Addison'.

4 Second Hate Mail Document

'The investigation failed to address why against the number of ethnic origin civilian staff still working at Ealing, 15 documents might be produced... only 6 of which were ever discovered and yet the number of staff who might potentially receive such documents appear to be well over 20. Such a basic enquiry does not appear to have been made...'

5 Dispatch system

Analysis by the Tribunal of the arrangement for collection and delivery of dispatch.

'The conclusion therefore from evidence of the mail dispatch system is that either the document as incorporated into the dispatch bag two days before it was ever thought to be printed or that it was hand delivered to Acton from Hanwell by an unknown officer at an unknown time on the Sunday to be incorporated into the Acton bag. No evidence has been adduced to address that situation'.

'For all the reasons above we feel that we must review our conclusion that on the balance of probabilities the print runs... are the racist document concerned'.

'As a result of our review of that evidence, the position we therefore have is that, if the racist hate mail was not produced on the 24 December at Hanwell and 18 January at Hanwell, there is no evidence as to where and by whom it was produced. PS Virdi is then in the position of being like 12 other officers – a victim of the hate mail'.

6 Was the failure to conduct the investigation with an open mind mere incompetence or some other reason – was that PS Virdi's race or ethnic origin?

PS Virdi was treated differently and to his detriment:

a In the failure to interview him in an informal way the same way as PC Bachelor was

b In the attempt to entrap him in a taped personal interview on 24/02/98

c In the use of the POLSA team to search his house

d To arrest and subsequently suspend him from duty without sufficient evidence to support the allegations.

Between the 5-8 December 2000, the Employment Tribunal held a Remedy Hearing to determine the award to PS Virdi.

It announced its decision that the MPS should pay PS Virdi:

- **1** £149,688 compensation for injury to feelings, aggravated damages and interest
- 2 £2,000 financial loss of missed overtime The extended reasons for this award were:
- 1 injury to feelings £100,000 (highest award to date)
- **2** findings of ET August 2000 PS Virdi subject of racial discrimination:
 - **a** failure to interview PS Virdi as per white female officer
 - **b** taping of PS Virdi during personnel interview
 - c use of POLSA search
 - **d** arrest and suspension of PS Virdi with insufficient evidence
- **3** impact of adverse publicity
- **4** impact of actions on PS Virdi as a police officer, as a Sikh and as a wrongly accused individual
- 5 aggravated damages £25,000
- **6** 'high handed' way MPS behaved towards PS Virdi both at the time and promulgation of decision
- 7 did not apologise until 30 November 2000
- **8** appearance that public announcement on 23 August 2000 was not genuine other issues outstanding
- 9 interest £24,688
- **10** calculated on whole period 15.04.00-08.12.00
- 11 pecuniary loss
 - missed opportunity for overtime £2,000
 - as salary had been reinstated

The Metropolitan Police Service did not appeal the decision of the Employment Tribunal.

4.6 Experience of the Employment Tribunal Chair – Mrs. J R Hill

Mrs. Hill kindly consented to meet with the Chair of the Inquiry to discuss her experience of the case. In regard to the case she stated:

'(It) was the most difficult I had ever had to preside over'.

Mrs J Hill 19 June 2001

Mrs. Hill explained the methodology adopted by the Tribunal. To establish if there had been a breach of Section 1 of the Race Relations Act 1976, the Tribunal had to determine if

- a PS Virdi had been treated less favourably than the comparator (a white female officer, PC Batchelor). To achieve this it was necessary to determine if PS Virdi had a different status in the inquiry i.e. was he the same as PC Batchelor a suspect or was he more than that.
- **b** If the Tribunal established that he was not (on the balance of probability) more than a suspect the question then would be why was he treated differently. Was it
 - a incompetence? or
 - **b** discrimination on the grounds of his race?

The Tribunal re-examined the circumstances of the case and delivered its outcome as detailed at 4.3.2 (a)

In reflecting on the difficulties associated with the case, Mrs. Hill referred to

'the reluctance of police in allowing discovery of evidence which impacted on the decision'

'this information was crucial to the Tribunal's decision making'

'the Police appeared not to appreciate the way in which a Tribunal addresses a race discrimination case differently from a criminal trial and involves a much more detailed examination of background matters'

Mrs. J Hill June 19 2001

Comments of Mrs J Hill (Employment Tribunal Chair) – speaking of the MPS internal procedures

'the potential for delay caused by the discipline process is quite unacceptable'

'the Metropolitan Police internal procedures, both grievance and discipline, appear to take forever'

Mrs. J Hill June 19 2001

4.7 Experience of the Directorate of Legal Services – Metropolitan Police Service

The Director of Legal Services attended a panel meeting and provided a written document from which the following has been extracted.

'This was an unusual case in that in ET proceedings it is rarely the applicant who has faced discipline. Usually the claim is concerned with the activities of others, one or more who may themselves be subject to discipline... an officer may choose how he wishes to defend discipline proceedings brought against him, or to advance an ET application. But if he addresses different evidence in the two set of proceedings, there is increased risk of inconsistent verdicts...

The ET accepted the computer evidence put forward on behalf of the MPS – then reversed that decision having formed a view of witnesses different from the Discipline Board.

An atypical case and, therefore, one should be careful about building recommendations on it.'

Mr David Hamilton, Director of Legal Services 19 March 2001

4.8 Experience of the Commission for Racial Equality (CRE)

The solicitor representing PS Virdi at the Employment Tribunal (from the CRE) attended a Panel meeting and later sent a written submission which is at Appendix 9.

She comments on the conduct of the case by the MPS solicitors who she makes clear at no time acted unlawfully or unethically. However, the following key points are made:

- 'However, it is broadly correct to say that their apparent litigation strategy, if successful, would have resulted in there never having been a substantive hearing on the merits of this case.'
- 'Once the internal disciplinary had reached its conclusion i.e. that Mr Virdi was guilty of all charges, the MPS solicitors attempted to have the Originating Application struck out as Mr Virdi had been found guilty in the internal hearing.'
- 'With regard to the discovery process, again the approach could be described as unduly contentious; discovery was resisted, for example, of the offender profile compiled during the internal investigation. When this document was eventually released, further to a Tribunal order, it was briefer than we had been led to expect and its contents did not appear to be highly significant.'

4.9 Management of Employment Tribunal cases within the Metropolitan Police Service

Employment Tribunal applications are received by the Employment Tribunal and Grievance Unit (P2) and are faxed to the Department of Legal Services (DLS) upon receipt.

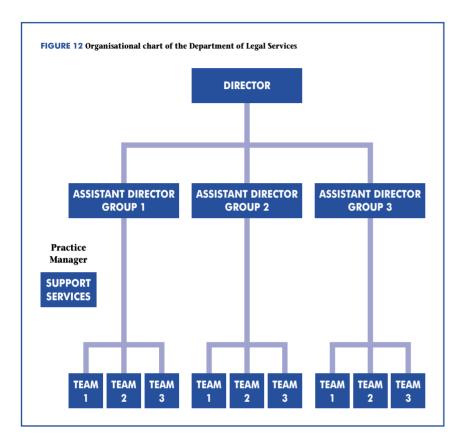
P2 act as the client on behalf of the MPS with DLS acting as the contractor. DLS provide P2 with copies of all key correspondence between the parties and the Tribunal.

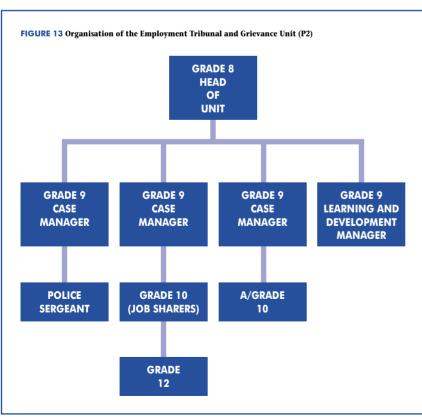
P2 supply the Director of Personnel with a full list of all ET claims together with a narrative and GANNTT chart of projected hearings on a monthly basis.

P2 supplies copies of ET applications to Personnel Managers in order that they may inform key players on the Borough or Department.

The DLS has three groups with thirteen lawyers in each, headed by Team Leaders and supported by staff. (see figure 12 overleaf)

P2 is staffed by a Grade 8 Manager who has three Grade 9 HEO Case Workers in her section. They report within the personnel structure although the Panel believe this reporting arrangement may change and move under the Professional





Standards Department. This has not been formally confirmed to the panel (see figure 13).

Overview of the ET Process

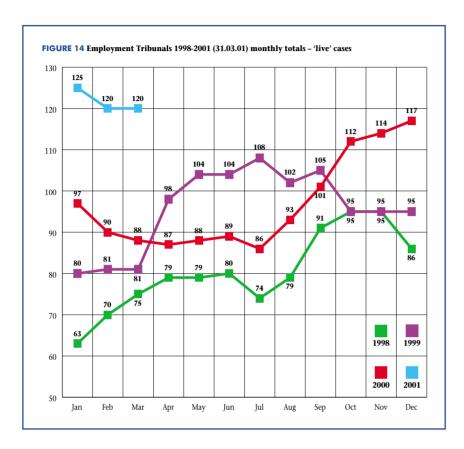
Whilst the Panel were assured that local managers were involved in the ongoing process of employment tribunal cases it received submission that indicated the management of cases by P2 did not encourage early resolution of matters.

Employment Tribunal and Grievance Unit have an important role to play in the monitoring of consistency and the provision of advice. During the late stages of the inquiry the Panel were advised of strategies put into place to reveiw cases and share learning. These initiatives were seen as very positive but the continuing hands-on involvement in all cases was not seen as an effective method of managing employment tribunal case work in an organisation as large as the MPS.

There is an increasing trend for staff to lodge a case with the ET Office to ensure that they are registered within the claim period and if necessary to withdraw them as matters are progressed with internal procedures (e.g. grievances, discipline or managerial action). See figure 14 indicating the number of claims being handled each month.

Figure 15 indicates the number of cases not progressing to Tribunal.

Examination of the cases lodged within the MPS over the three year period 1998 to 2000 is shown at figure 7. It is interesting to compare this information with the national picture shown at 4.4. Overall the total number of employment tribunal cases lodged has increased by 10% between 1998 and 2000. This is compared to a national increase of 42%. (This lower increase can be partly attributed to the fact that as police officers are not employees they do not have the same right to take a claim in for example unfair dismissal and disability discrimination cases.) There is, however, a significant difference in the claims lodged in respect of racial discrimination. Records held by the MPS indicate that there has been a 43% increase in the number of cases recorded as 'racial discrimination'. This

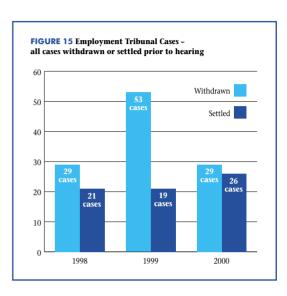


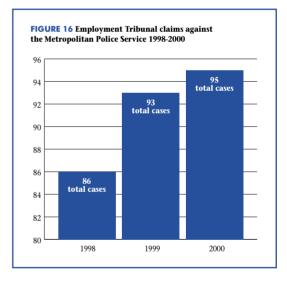
percentage increase rises to 68% when all applications that have included 'racial discrimination' are included (e.g. where the claimant has lodged a case citing racial discrimination and sex discrimination). The national picture indicates an increase of 25% over the same period. The Panel were most concerned by this finding.

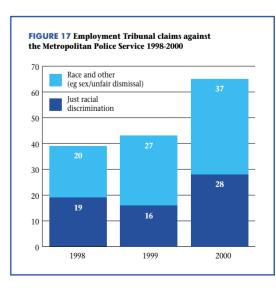
ET Statistics for MPS

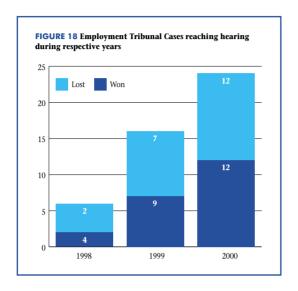
The number of ET cases being lodged and subsequently progressing to ET Hearing is also increasing (see figure 18).

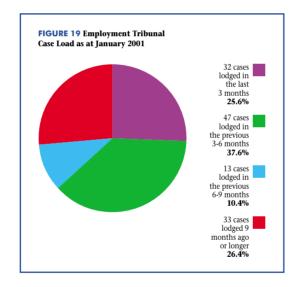
This increase is having a major impact on the workload of the Employment Tribunal and Grievance Advice Unit. The Panel were impressed by the commitment of this unit. During the period of review by the Inquiry, one case manager was managing 50 live cases. They recognise that a very important part of their work is to advise managers and other personnel staff on best practice, but this is being hampered by a hands on approach of dealing with caseload. Indeed, the











manager of the unit has had to take on extra cases personally to relieve the workload of her staff.

The Section has managed to produce some valuable guidance to managers and supervisors which has been well received (see Appendix 10) and it is hoped that this practice will be extended.

Obtaining Counsel's Opinion

Counsel's preliminary advice is obtained at the same time as the Grounds of Resistance to an ET application are drafted. Further advice is obtained in the course of the proceeding dependant upon the issues arising e.g. in relation to preliminary/direction hearing. A final advice on merits is obtained following the pre-hearing

conference with Counsel attended by key witnesses and the P2 case worker.

There is an approved list of Counsel selected from specialist Employment Chambers. Counsel for a particular case and his/her experience, sometimes with input from the client.

There is an ongoing process of review of the merits for a claim based on Counsel opinion.

A request for authority to settle is referred to appropriate senior staff within the MPS based on the costs involved.

In regard to the use of ACAS, the Director of Legal Services states:

'There is a nominated ACAS officer who is responsible for ET applications brought against the Commissioner. Contact is usually made with the relevant lawyer shortly afterwards, following the issue of the application. If the applicant is not represented, then ACAS often play a role in the negotiations of a settlement (COT3)'

David Hamilton, Director of Legal Services MPS March 19 2001

Views from ACAS on dealings with the MPS (17 January 2001)

- we are sometimes told internal procedures are not yet exhausted and there is no role
- we are often dealing with 8 or 9 different solicitors
- often individuals will say that all that was needed was an apology to settle the matter

4.10 View of the MPS handling of **Employment Tribunals by other** parties

In his recent review of Diversity within the MPS, Sir Herman Ouseley⁵ advised

'This review also reveals an insensitivity and inadequacy in the handling of cases going to Employment Tribunal, with all the negative publicity and reports. The organisation has clearly failed to capitalise effectively on its own expertise and drive for innovation, and so has failed to change the existing organisational culture to one which really values its staff and steers them in the single direction of serving the public effectively and fairly.'

Sir Herman Ouseley MPS Diversity Strategy: A Review, May-November 2000

Following an interlocutory hearing at Watford Employment Tribunal - Mr M.S. Sandhu v the Commissioner of Police of the Metropolis – the Regional Secretary to Tribunals wrote to the Commissioner:

'increasing concern that this case and other cases involving the Metropolitan Police Commissioner were being the subject of applications for a stay of the proceedings, pending the conclusion of internal disciplinary proceedings against officers other than the Applicant, who were alleged by the applicant to have discriminated against him.'

Regional Secretary letter to the MPS dated 27 July 2001

4.11 Experience of other Police Forces

4.11.1 West Midlands Police

West Midlands Police extended an invitation to visit their force and share detail in respect of the administration of the employment tribunal process. It should be noted that this force is the largest metropolitan police force after the MPS.

ITI claims are received within the West Midlands Police via the Personnel Department where they are forwarded to the Legal Services Department.

The process is managed by a series of regular meetings with personnel officers, the relevant OCU Commander and other parties as necessary, e.g. Head of Professional Standards.

Further meetings may take place, including with the applicant, with a view to seeing whether some compromise would be reached.

'We discuss our approach to the problem, the tactics and objectives we are trying to reach – not only is there local ownership but it is also a good learning exercise for the local management, to avoid similar mistakes being repeated.'

J.M. Kilbey LLB - Force Solicitor

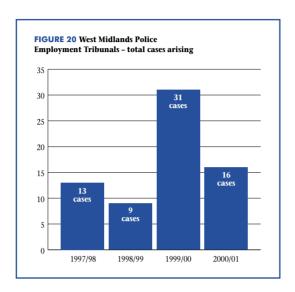
'Sometimes there is a perceived barrier between the organisation and the individual which ACAS can help bridge. We do not use them in every case - I have however found them generally good, with a constructive approach towards a sensible settlement.'

J.M. Kilbey LLB - Force Solicitor

The involvement of local managers, advised by their local personnel staff, the regular meetings between relevant parties and the efforts to find ways to breach 'deadlock' were identified as good practice by the Panel.

The statistics in respect of the West Midlands Police are shown in figure 20 overleaf.

5 The MPS have accepted the recommendations of this review and are making organisational changes to implement them

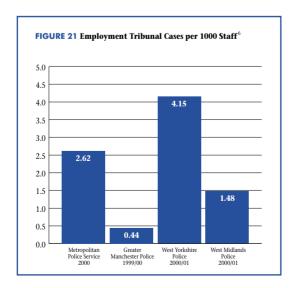


4.11.2 Experience of other forces

During the Inquiry other metropolitan police forces were contacted for detail of their experience of Employment Tribunals. Responses were received from West Yorkshire, Greater Manchester and West Midlands. Statistical data is shown in figure 21.

4.12 Handling of Employment Tribunals within the MPS - Findings of the Inquiry **Panel**

The procedure described in 4.9 does not encourage dispute resolution to be negotiated at an early stage. The Panel make the following observation to support our claims/perceptions:



6 Statistics provided had been recorded over different accounting periods and are indicated accordingly.

- 1 Relationships and potential informal dispute resolution between local personnel officers/managers at Borough or Departmental level and the applicant are not encouraged by the management of all employment cases in P2.
- 2 The potential moving of P2 to Professional Standards is seen as a retrograde step within a culture where discipline and misconduct are not seen as compatible with informal dispute settlement.
- **3** There appears to be an over reliance on Counsel's opinion in the progress of cases. QC advice will only be as good as the 'briefing' he/she is given. If that briefing was incomplete, tainted, biased or defective - Counsel's advice would also be defective
- **4** There are insufficient mechanisms for involving local managers and people involved in the case to determine the direction of proceedings
- **5** There is little machinery in place to attempt dispute resolution locally with or without the involvement of ACAS.
- **6** The workload is driving the machinery as opposed to a strategy being developed
- **7** Senior officers need to ensure that DLS advice is considered as one of a menu of options. The Panel were mindful of comments made at a recent ACPO Conference by Dan Crompton.

'Resting wholly on legal advice without bringing into play other factors is defective and not holistic'

HM Inspector of Constabulary Dan Crompton

- 8 Senior officers should review ongoing correspondence between DLS and claimants, making a judgement as to when legal speak should be replaced by plain-speaking and actions.
- **9** The practice adopted by DLS to stay proceedings and resist discovery is bringing the MPS into disrepute (see 4.6, 4.8, 4.10).
- **10** Lack of trust and confidence in the grievance machinery is a possible cause for staff to seek redress at ET at an early stage.

5.0 Grievance Procedure

5.1 Good Practice

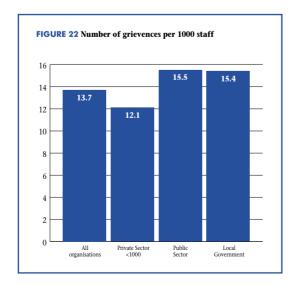
5.1.1 Employment Law

Employers are not required by statute to have a grievance procedure. It is, however, recognised as good employment relations practice to provide workers with a reasonable and prompt opportunity to obtain redress of any grievance. Employers are statutorily required, in the written statement of terms and conditions of employment to specify, by description or otherwise, a person to whom the employer can apply if they have a grievance (Employment Rights Act 1996). The Employment Relations Act 1999 also requires that workers should be allowed representation in certain grievance hearings.

5.1.2 Advisory Conciliation and **Arbitration Service - Code of Practice.**

In September 2000, ACAS issued a Code of Practice on Discipline and Grievance Procedures (see analysis at figure 22). Whilst not enforced by statute, the Code of Practice is used by Employment Tribunals as a good practice model with which organisations should seek to comply.

It is recognised, therefore, that a healthy organisation will receive grievances from its workers. In a recent survey for Personnel Today HR Benchmarker MCG Consulting Group produced the following findings in respect of the



average number of grievances received by employers, per thousand staff. The findings revealed that public sector organisations received on average 15.5 grievances per thousand staff (see figure 22).

5.1.3 Home Office Guidance

At the time of writing this Report, the latest advice to police forces in respect of grievance procedures is contained in Home Office Circular 16/1993 (see Appendix 11). That document took account of comment and suggestions from the Commission for Racial Equality and the Equal Opportunities Commission and contained 'guidance on the operation of a Grievance Procedure'.

In its Background the Home Office Circular referred to a previous Circular 87/1989 'Equal Opportunities Practice in the Police Service' which also contained guidance on grievance procedures. Home Office Circular 16/93 found that

'over time a number of concerns have arisen that the procedure recommended in Home Office Circular 87/1989 was potentially incompatible with the police service disciplinary code.'

Home Office Circular 16/93

The specific areas of concern were:

- The need to clarify the scope of the grievance procedure, to emphasise its applicability to a wide range of personnel management issues, including discrimination on the grounds of sex or race, racial and sexual harassment and other cases of unfair treatment.
- The need to clarify earlier guidance on the use of evidence obtained from grievance investigation in a disciplinary case, and
- Handling issues in relation to Industrial Tribunal proceedings. The earlier guidance which advised that grievance cases will be held in abeyance pending the outcome of any disciplinary investigation carried the risk that, because of the time limit on IT proceedings, individuals could be prevented from exercising their right to a Tribunal.

5.1.4 Recent Publication

The Parekh Report, The Future of Multi-Ethnic Britain, has a section on grievances and complaints and states

'Effective grievance and complaints procedures are an essential component, among others, of action against institutional racism. For not only are they ethically right, they also highlight aspects of an organisation that are not working properly and can provide an invaluable impetus for organisational change.'

The Future of Multi-Ethnic Britain, 2000

5.2 Grievance Procedures within the **Police Service**

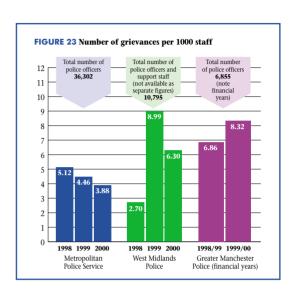
A number of forces have identified that the operation of grievance procedures within the service is not as effective as it could be. Staff surveys have revealed that staff do not take out grievances for fear of reprisal and there can be lengthy delays in addressing the concerns raised.

During a recent ACPO Conference HM Inspector of Constabulary, Dan Crompton expressed concern over the excessive length of time taken to deal with grievance and an apparent indifference about lack of progress in bringing grievance to a conclusion. He warned that

'If a member of staff does not feel their grievance will be listened to – that divisional, departmental or HQ managers are aloof and have closed minds they will find another outlet. This is where the real danger lies... management style, the working environment and a professional approach to personnel matters is the answer'

HMI Dan Crompton

Research undertaken for this Report has indicated that the use of grievance within the Metropolitan Police forces is as shown at figure 23. It can be noted that the average number of grievances per thousand workers falls well below the average indicated for the public sector as shown at figure 22.



Possible reasons for this under usage could be:

- More staff are happy and have no concerns about their work
- There is no trust and confidence in the process
- The police culture tends to encourage staff to get on with it and keep their head down
- Because policing is a *job for life*, there is a need to refrain from getting a bad name as it may affect future prospects

Earlier this year the Director of Personnel for Hampshire Constabulary, Maureen Adamson, was asked to chair a group to review the advice provided to police forces in respect of grievances, and to update the advice contained in Home Office Circular 16/1993. The Group which comprises representatives from the main staff associations and trade unions, officers and support staff from metropolitan and county forces and Home Office personnel is due to report its findings to the ACPO Equality Sub Committee later in 2001.

'The aim of this work is to provide a model of good practice for forces in respect of grievance. It is likely to take the form of a check list against which forces can measure their own grievance procedures.'

Maureen Adamson Chair of the Group - June 2001

5.3 The Metropolitan Police Grievance Procedure

The Metropolitan Police Service Grievance Procedure currently in use was introduced on the 22 March 1996 (copy attached as Appendix 12). It came into effect on 1 April 1996 following consultation with Staff Associations and Trade Union Sides as agreed by the Personnel Policy Review Group.

At that time, a review of the equal opportunities strategy had recommended that:

'grievance procedures should retain focus on fair treatment, but operate to a less rigid timescale, with greater emphasis on local resolution and with fewer stages'.

An overview of the procedure is shown at figure 24.

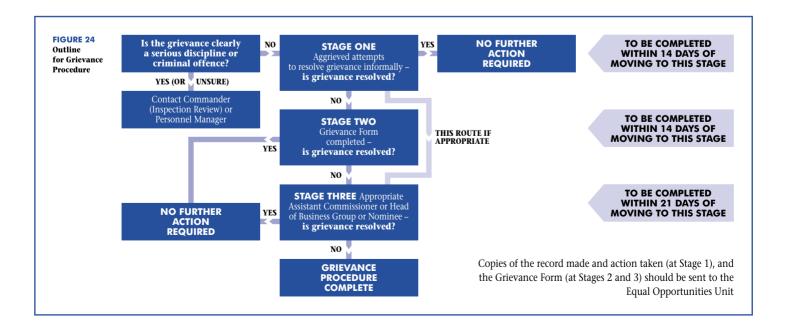
There are presently arrangements in place to review this procedure. This has been prompted in part by a review carried out by Sir Herman Ouseley into the Diversity Strategy of the MPS. In his findings he wrote:

The most obvious indicator of black and minority ethnic staff dissatisfaction is evidenced through the nature of complaints and grievance about racism, exclusion and discrimination... The inadequacy and incompetence and outdated management practices which are the cause of these problems must be addressed quickly and expeditiously. Processes must be put in place that are open and transparent and have the capacity to challenge and deal with failures of effective people management.

Grievances and complaints (Section 5.05 of the Report) Sir Herman Ouseley The Diversity Strategy: A Review

A report by Her Majesty's Inspectorate of Constabulary – Policing London 'Winning Consent'

'The grievance procedure is not supported or valued by staff: there is little faith in the system and a lack of confidence in the benefit that it is intended to deliver. Her Majesty's Inspectorate identified a need to review the procedure to make it more effective and user friendly for both management and staff'



It is perhaps interesting to compare comments made by staff during the conduct of the Inquiry with extracts from the Grievance Policy.

Extracts from MPS Grievance Procedure

Para 1.1 The grievance procedure is intended to resolve issues as quickly as possible.

Para 1.2 The general principles of the grievance procedure are early resolution, confidentiality and impartiality.

Para 4.1 The procedure is intended to provide fairness to all parties, including the person against whom the grievance is directed.

Para 5.1 Victimisation of a person who invokes the grievance procedure, or who provides any form of assistance to someone who is invoking it, may amount to a breach of discipline, and in discrimination or harassment cases may constitute unlawful conduct under the Sex Discrimination Act 1975, Race Relations Act 1976 and the Disability Discrimination Act 1995.

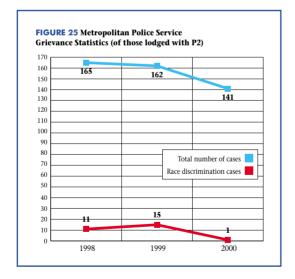
Comments made by focus group members February 2001

'there are delays in the process'

'1st line supervisors do not have the confidence or time to deal with issues at an early stage – issues are pushed up'

'support seems to be focused towards those complaining and not those complained about (frequently supervisors)'

'a perception that if a grievance is taken, that member of staff is an 'irritant''



An analysis of statistics held by the MPS in respect to the use of the Grievance Procedure is shown at figure 25.

It is interesting to note how this decrease in the number of grievances is mirrored by the increase in the number of cases lodged at Employment Tribunal (see 4.9).

Figure 26 seeks to examine the grievance procedure used by the MPS with the good practice guidance referred to 5.1. The first two columns of the chart seek to draw out the main requirements as highlighted by ACAS and Home Officer Circular 16/1993. These requirements are compared to the wording of the MSP grievance procedure and is detailed in column 3. Column 4 indicates comments made by staff and staff groups, when commenting about how the procedure is operated within the MPS.

The Panel observed that the MPS grievance procedure contained many of the good practice requirements. It did believe however that more emphasis was required on the use of informal action, i.e. action of first line managers to tackle the issues raised quickly without the need to progress into the more formal machinery. The

Panel were, however, concerned to note the requirements in respect of the interface with discipline. It is interesting to note that this subject area receives little mention within the

ACAS Code of Practice but receives separate sections in both the Home Office Circular and the MPS procedure indicating that this is an issue particular to the police service.

Comparison between the Grievance Procedure used by the Metropolitan PoliceService and Best Practice Guidance

FIGURE 26

Advisory Conciliation and Arbitration Service	Association of Chief Police Officers Home Office Circular 16/1993	Metropolitan Police Service Procedure (1996)	Practice in operation (2001) – comments from Staff Associations Focus Groups	
1 Overview				
a procedure should be simple (Para 39)	a flexible and informal (Para 5)	a No mention of informal procedure Page 1 of the background refers to formal	 Procedure has become devalued System not trusted Perception that if a	
b Set down in writing (39)	b Procedure in writing	b Procedure is in writing	grievance is taken that member of staff is 'an irritant'	
c Rapid in operation (39)	c To resolve issues quickly (Para 5)	c To resolve issues as quickly as possible (1.1)	initant	
d Good employment relation practice to provide all workers with a prompt opportunity to obtain redress of any grievance (35)	d Applicable to all staff (Para 6)	d For use by all members of the MPS (1.1)		
e Confidential in records and proceedings	e Conducted in strictest confidence (Para 4.1)	e All cases conducted confidentially (3.1)		
2 Training and Aware	eness			
a All workers made aware (41)		a Special Notice 12/96	 Further training required 	
b Training – supervisory managers and representatives (41)	b Best delivered in force (Para 9)	b Distributed as Grievance Handling Pack – advice to managers and supervisors	 Managers face dilemma when dealing with discipline/ET/grievance – clear guidance needed to empower managers to 	
c Workers given copy		c Special Notice	act robustly	

12/96

or access (41)

Conciliation and Arbitration Service	Chief Police Officers Home Office Circular 16/1993	Police Service Procedure (1996)	(2001) – comments from Staff Associations Focus Groups
3 Process and Stages			
a Most grievances resolved informally with immediate line manager (42)	a Informal and flexible way of resolving problems at work (2.1) Matters of concern should normally be discussed with a line manager	a No 'informal stage' or reference to a line manager's first effort to find a resolution	• 1st line supervisors do not have the confidence or the time to deal with issues at an early stage
			 Managers should accept and take responsibility at an early stage
b 1st formal stage in in writing, outcome within 5 days of a Hearing (43)	b 1st formal stage – orally or in writing – resolve within 7 days (9.6)	b 1st stage – informal resolution – orally or in writing, 14 days to resolve (8.3) If not resolved – form to be completed	
c 2nd stage in writing, outcome within 10 days of a Hearing (43)	c 2nd stage – Divisional/Dept Head – resolve within 14 days (10.1)	c 2nd stage – Divisional/Dept Head – resolve within 14 days (9.1)	
d 3rd stage in writing' outcome within 10 days of a Hearing (43)	d 3rd stage – Chief Officer – resolve within 21 days (11.1)	d 3rd stage – Assistant Commissioner – resolve within 21 days (10.1)	

Advisory Association of Metropolitan Practice in operation

Advisory Conciliation and Arbitration Service	Association of Chief Police Officers Home Office Circular 16/1993	Metropolitan Police Service Procedure (1996)	Practice in operation (2001) – comments from Staff Associations Focus Groups
4 Representation			
a Workers have a statutory right to be accompanied by a fellow worker or trade union official when they are required or invited by their employer to attend (50) • certain grievance hearings • in relation to the 'duty of an employer in relation to a worker' (Employment Relation Act 1999)	a Right at any stage to consult with and be accompanied by a representative of – Staff Association, recognised Trade Union, a colleague or a friend (3.11)	a Right at any stage to consult with and be accompanied by a representative of – Staff Association, recognised Trade Union, or other serving member of the Metropolitan Police Service (2.1)	
Advisory Conciliation and Arbitration Service	Association of Chief Police Officers Home Office Circular 16/1993	Metropolitan Police Service Procedure (1996)	Practice in operation (2001) – comments from Staff Associations Focus Groups
5 Records			
a To be kept and retained in accordance with the Data Protection Act 1998 (49)	a At the conclusion of the grievance procedure all records and relevant papers should be forwarded to the Equal Opportunities Office for retention (14.1)	a All records and relevant papers to be sent to Equal Opportunities Unit	
6 Monitoring			
No advice provided	 a All grievances relating to Equal Opportunities should be registered and monitored (17.1) b Use of procedure to be reported to senior management 	a Register and monitor all grievances (15.1)	

Advisory			
Conciliation			
and Arbitration			
Service			

Association of Chief Police Officers Home Office Circular 16/1993 Metropolitan Police Service Procedure (1996) Practice in operation (2001) – comments from Staff Associations Focus Groups

7 Relationship to Discipline Procedure

Little advice provided

- a Except in exceptional circumstances it would not be appropriate for the supervisor to make a report to the officer in charge of Complaints and Discipline if the aggrieved person does not wish to make desciplinary allegations against the officer concerned (15.4)
- b Attempts to find a resolution to the original grievance should not be deferred pending the outcome of the disciplinary enquiry (15.9)
- C The grievance procedure should be run concurrently with, though separate from, the discipline enquiry (15.9)

- a The final decision to initiate a discipline enquiry will always remain with the Commander (Inspectorate to review), having regard to all circumstances, to decide that a matter should remain with the grievance (14.3)
- **b** Attempts to find a resolution to the grievance may prove difficult until the outcome of any discipline enquiry is known (14.10)
- C The grievance procedure should run concurrently though separately from the discipline enquiry. However, resolution of the grievance may be deferred pending the outcome of the discipline enquiry with the agreement of the aggrieved (14.10)

- Lack of proportionality in use of discipline
- Formal action is taken too readily

5.4 Experience of other Police Forces

5.4.1 West Midlands Police

In 1999, the West Midlands Police revised their grievance procedure from a three stage procedure into a two stage process. The aim of this revised procedure was to:

- 1 encourage local ownership of issues
- 2 encourage specialist handling of grievances
- **3** provide a 'fast track' procedure in the event of sensitive cases

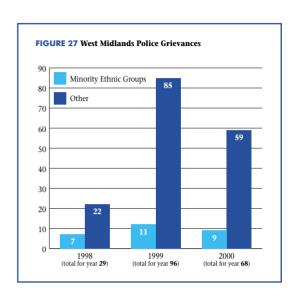
The Director of Personnel, David Williams believes that the procedure has improved trust and confidence in the process and during 1999 the Force received an increase in the number of grievances raised.

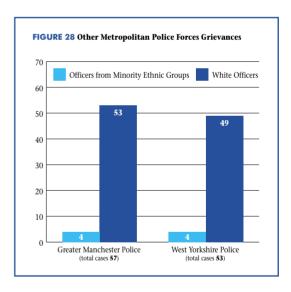
Grievance handling in the West Midlands Police is seen as an important part of an ongoing process of encouraging local management and responsibility. Central involvement in grievance handling is restricted to an overview providing an opportunity to take organisational action in the event that an issue requires chief officer intervention or to perhaps co-ordinate management action when related issues arise through other departments e.g. Professional Standards (Misconduct Cases) or the Solicitors Department (Employment Tribunal).

West Midlands Police have introduced a process whereby issues are reviewed on a quarterly basis in a meeting between the Director of Personnel, the Force Solicitor and the Head of Professional Standards. At this meeting cases are reviewed and if necessary local managers invited to provide updates. This has proved highly successful in taking urgent action in sensitive or potentially high profile cases and was noted as good practice by the Inquiry.

5.5 Other Metropolitan Police **Forces**

All metropolitan police forces were contacted as part of the Inquiry. The statistics resulting from this research are shown in figure 28 (only Greater Manchester and West Yorkshire forces replied.)





5.6 Summary of findings re the **MPS Grievance Process**

- 1 The MPS Grievance Procedure meets the statutory requirements i.e., those in respect of representation
- 2 The MPS Grievance Procedure broadly meets the requirements as laid down in the
 - **a** ACAS Code of Practice (2000)
 - **b** ACPO HOC 16/1993

Subject to comments made at 3.

3 The MPS Grievance Procedure does not contain an informal stage. Stage 1 of the Procedure is entitled Informal Resolution but the process as

described is formal in its recording and procedure. There is no dialogue to encourage the recommended use of line manager intervention and resolution prior to the 'Informal Resolution' stage.

- 4 The ACPO Guidance and MPS Grievance Procedure contain detailed advice in relation to the procedure to be adopted in the event that disciplinary matters raised during the grievance process.
 - ACAS Code of Practice offers little advice in this area
 - There is a different emphasis in the MPS procedure that implies that grievance monitoring should await an outcome of the disciplinary process, compared to the ACPO Code of Practice
- **5** Statistical comparisons indicate there is lower usage of grievance machinery within the MPS (and the other metropolitan forces examined) compared to other public sector companies.
 - Staff groups indicate a loss of trust and confidence in the process and concern over time timescales associated with outcomes.

G Findings: other

6.0 Public Relations

6.1 Good Practice Guidelines

Race, ethnicity and the role of the media played a central role in this case. We note that the National Union of Journalists (NUJ) Code of Conduct and Guidelines on Race Reporting states:

- Only mention someone's race if it is strictly relevant. Check to make sure you have it right. Would you mention race if the person was white?
- Do not sensationalise race relations issues, it harms black people and it could harm
- Do not make assumptions about a person's cultural background - whether it is their name or religious detail.
- Be wary of disinformation. Just because a source is traditional does not mean it is accurate.

6.2 The Lawrence case

6.2.1 In the case of Stephen Lawrence the media played a crucial role, bringing to the public's attention the plight of Mr. and Mrs. Lawrence, especially after President Nelson Mandela's meeting with the family in the glare of the media. Neville Lawrence said:

'The first time that we became aware that someone had been arrested for the murder was when we heard it on the TV or radio. We did not hear it from the police. We heard it from the media and it was a surprise.

'[President Mandela] was really interested and wanted to spend twenty minutes with us listening to our grievances about the way in which we were being treated by the police... The media and everyone was there the morning that we met him and straight after that, the following morning all of a sudden these guys were arrested.

'That suggested to me that the government of this country did not care about me and my family unless the media was present or our outcry came from certain sections of the community or someone as powerful as Mandela.'

Neville Lawrence, statement to the Lawrence Enquiry, 7 March 1998

6.3 The Employment Tribunal's view on the role of the media

6.3.1 The media played an important role in PS Virdi's case from the outset. The nature and timing of these events were significant and newsworthy. In the Remedy Hearing the Employment Tribunal were of the view that PS Virdi was the subject of 'ongoing publicity', largely generated by the MPS and calculated to 'further damage his reputation'.7

'The use of the POLSA search and the fact of the arrest and suspension obviously and foreseeably had a serious impact on him, his family, his neighbours and his local community. If it were limited to those persons it would be a very serious matter. However, the knowledge of what had happened to PS Virdi was not limited to a small community. Unlike every other case that had been cited before this Tribunal, PS Virdi's position was known immediately nation-wide. It was known nation-wide at the time of the discrimination and has continued to be known nation-wide and been perpetuated in that position by the ongoing publicity, which we find was largely generated by the Respondents.'

6.3.2 PS Virdi's evidence to the inquiry supports the inference drawn by the Employment Tribunal about the information supplied to the media by the DPA on this case.

Section 96 of the Reserved Decision of the Tribunal illustrates the seriousness with which they considered this matter:

'We also considered the impact of the press interest in this matter. From the outset of the distribution of the racist mail at Christmas 1997 the matter had been in the public domain through the press. One of the issues before the Tribunal was who leaked what to the press on the day of PS Virdi's arrest. It was said that the Black Police Association first approached the press although Commander Gilbertson directed the press bureau of the Metropolitan Police to release information. It was clear that far more than was

7 Remedy Hearing: The Employment Tribunals, Case Number: 2202774/98 Between Mr. GS Virdi (Applicant) and The Commissioner of Police of the Metropolis (Respondent), Para. 16.

originally planned was revealed to the press, because. on the day after his arrest, details of the alleged motive appeared in the press. As at that time PS Virdi had not been interviewed, he clearly could not know what motive was being put to him so we must infer that that information was released by the Respondent (i.e. the MPS) to be without any foundation, for it to be published was clearly a detriment to PS Virdi.'

6.4 The MPS Media Strategy

- **6.4.1** This inquiry has repeatedly requested an opportunity to view the DPA's press file and associated papers on PS Virdi . Regrettably, at the time of writing the MPS's Directorate of Public Affairs has not produced these papers.
- **6.4.2** It would appear from the evidence before us and the Employment Tribunal findings8 that the MPS had in place a media strategy to cast doubt on PS Virdi's character and background. The arrest, the suspension and the speed with which the case was brought to public attention ('immediately nation-wide') was 'obviously and foreseeably' presented in the media as a presumption of guilt.
- **6.4.3** PS Virdi maintains that he was portrayed as guilty even before he was interviewed.

The Panel take a similar view to that of the Employment Tribunal in respect of assessing the motives and intentions of those responsible for managing the MPS's public relations.

There appears to have been a tension between the MPS' conventional position where the ethnicity and cultural background of a defendant/officer would not 'normally' be released to the media, and the attempt to denigrate PS Virdi in the press, his race, religion and ethnicity being added to put another dimension to the story at the time when the Lawrence Inquiry dominated the headlines.

6.4.4 The MPS states a number of reasons for not following its normal course of action:

'When giving out arrest and charge details, we would not normally have released the ethnicity of a defendant. However, in this case, it is felt important to redeem the efforts of the MPS in addressing issues of racism and to redress the false assumption that the incident has arisen through inter-cultural hostility, i.e. white against black. We therefore propose that a separate IF ASKED statement is prepared confirming the ethnicity of the suspect if asked by reporters. We would not go into details about his motive.'

The Inquiry Panel are concerned about the reasons given for releasing the ethnic identity of the defendant in this case; it also has serious reservations in regard to the meaning and implications of any attempts 'to redeem the efforts of the MPS in addressing issues of racism'.

6.4.5 These matters were taking place during the high-profile hearings of the Stephen Lawrence Inquiry at Hannibal House in South London⁹. PS Virdi believes this played an important role in the MPS media strategy:

'The Daily Mail article on the 16th April 1998 is an eye opener, the article proved how 'close' the MPS were with some journalists and provided them with misleading information that would minimise the embarrassment of the outcome of the Stephen Lawrence inquiry. It was designed to say that racism is between black and Asians, it gave my motive, it stated that I had been interviewed and the file had gone to the Attorney General for a decision as to prosecution. The press release was made by 2 Area on authority on Commander Gilbertson. The truth is that I was not interviewed until the 17th **April – a day after the article**. This article proves the collusion of certain officers of the MPS and the Daily Mail to give the general public misleading information. No one has been disciplined on this matter. The Daily Mail, interestingly, has never to date asked me for a quote or to tell my side of the story in order to correct the earlier articles they published.'

⁸ Employment Tribunal -Remedy Hearing, 8 December 2000.

⁹ PS Virdi gave evidence to the Stephen Lawrence Inquiry.

- **6.4.6** With regard to the media strategy, PS Virdi believes:
- i that he was the subject of negative briefing to the press by the MPS's Directorate of Public Affairs;
- ii that he was used as a 'scapegoat' to 'minimise the embarrassment to the MPS of the outcome of the Stephen Lawrence Inquiry, changing the emphasis of racism from 'white against black' to that 'between blacks and Asians';
- iii that the MPS appear to have a close relationship with particular journalists, providing them 'misleading information' as well as leaking 'details of our solicitor's confidential letter';
- iv that the MPS were prepared to blame the Black Police Association (BPA) for leaking sensitive information to the press on the case;
- v that briefings and press releases were designed as 'deliberate character assassination' ploys.
 - **6.4.7** Since the MPS were unable to provide the Panel with its press file for this case, we were unable to either prove or disprove PS Virdi's assertions about the Directorate of Public Affairs¹⁰. However, the Panel noted the view taken by the Employment Tribunal and the importance it attached to the cumulative effects of the MPS media strategy on PS Virdi, his family and his community. These perceived effects informed part of the agreed settlement for aggravated damages.

6.5 The Employment Tribunal award

6.5.1 We have reproduced in full the Employment Tribunal's reasons for the sum awarded and its perceptions of the *modus operandi* of the MPS in the case of PS Virdi:

'Aggravated Damages

We consider that it is appropriate to make an award of aggravated damages in respect of the high-handed manner in which the Respondents have behaved towards PS Virdi, both during the time of the discrimination and since the promulgation of the decision. We note the public announcement made by Ian Blair. The impression that the announcement purports to give is that the Respondents accept that they were wrong and that they wish to put the matter

right. However, they did not but the matter right by way of an apology until 30 November 2000. Further more, the media, television, radio and newspaper, interviews carried out with senior police offers within the Metropolitan Police made it clear they had no intention of apologising to PS Virdi for the fact they got it wrong. It would appear therefore that the public announcement on 23 August 2000 was not genuine. This view is supported by the internal documentation which refers to the internal disciplinary proceedings being outstanding and there being two sets of judicial proceedings such that the outcome is 'one all'. The Respondents accepted very quickly that they were not going to oppose PS Virdi's appeal to be reinstated. Once that had happened, there was no reason whatsoever for them not to make a formal apology such that the appeal could be a formality. The failure to make that apology is a further 'slap in the face' for *PS Virdi.* Coupled with this is the ongoing publicity. *Immediately prior to the Remedy Hearing, newspaper* articles appeared setting out what PS Virdi was seeking to recover by way of a negotiated settlement in these proceedings, further damaging his reputation. We therefore consider that there should be a further award of damages to PS Virdi to reflect the attitude of the Respondents in the sum of £25,000.'

6.5.2 There are important lessons to be learned about this case and the MPS's handling of other 'sensitive' cases, especially those with a race relations dimension. The influence of the media is immense. This influence is not only a vital instrument of liberty and the dissemination of information in a democratic society, but it also affects how institutions conduct their affairs and how individuals 'receive' and 'decode' the news. It is easy to blame the media for many things, but the media are not a force in themselves. They are fuelled by individuals and organisations with both desirable and undesirable motives and agendas. As a public and accountable body the MPS has a responsibility to ensure that clarity of purpose and integrity informs its public relations management, and its public relations culture. In light of the Lawrence recommendations on the need for openness and transparency in the police service we simply say that integrity generates trust; and an organisation with integrity is ipso facto a transparent organisation.

10 See Appendix 13a, letter dated 20 November 2001 and Appendix 13b, letter dated 20 November 2001. This offer to review the press file was received too late for consideration by the Panel.

6.5.3 The Inquiry Panel are aware of the new public relations policy of the MPS. This new public relations policy came into effect one month after the promulgation of the Employment Tribunal decision. The document is welcomed, for it seeks to address some of our concerns. However, it does not remedy nor provide adequate guidelines around sensitivities in regard to those matters deemed 'not for public disclosure'. Neither does it address the 'off the record' briefings by senior officers. The Panel feel that it is in this area where the most damage is often done, allowing for personal prejudice, bias and misinformation to take place. In short, this is where a particular 'spin' can be put on the information given to the media and where a particular slant or nuance is presented with a calculated impact in mind.

7.0 Trust and Confidence

7.1 Values and aspirations

The MPS faces an extremely difficult and complex job which for the most part it does with vigour and vision. Trust and confidence in policing is the aspirational value for all police forces. Making this aspiration and value normative is one of the key challenges for policing in London. This section looks briefly at trust and confidence externally and internally and ways in which it affects the organisation.

7.1.1 The Metropolitan Police Service is noted as an excellent police service, and in many respects the MPS is seen as the leading police service in the world. When, for example, the MPS is commended for its outstanding work in foiling and halting the criminal enterprise of drugs cartels, or pre-empt the plans of individuals or terrorist groups trying to disrupt, kill and maim innocent Londoners going about their day-to-day activities they are rightly and highly praised. But trust and confidence in the institution, and senior individuals in it. often hits the low end of the public confidence barometer. Unfortunately, there are some sections of the community where the public confidence barometer persistently moves toward the lower end – and sadly often remains there more than periodically.

7.1.2 Undoubtedly, this was the case for some sections of the ethnic minority community in respect of the Virdi case. Rightly or wrongly the issue of public confidence in the police service tends to stir up debate when high profile and controversial cases take on a marked racial construction. Distrust, like 'trust and confidence' is not a one way street, but rather a two way street down which the police and the community have to travel with mutual respect, courtesy and 'due care and consideration' in the interest of community safety, crime reduction and good community-police relations. The Stephen Lawrence Inquiry Report provides a framework and a context for understanding the two-way street paradigm of good community-police relations, as well as an appreciation of what 'trust and confidence' should look like in policy and in practical terms.

Those civilians and officers working inside the service should have no less trust and confidence in its fairness, justice and integrity than the vast majority of the public on the receiving end of policing. Of course, we recognize that there will always be a very tiny minority who will be hostile to the police and the moral dictates of a lawabiding society.

The Lawrence Inquiry

7.2 What does trust and confidence in the police service mean and look like for PS Virdi? In his written submission to the inquiry, PS Virdi maintains that racism played a major part in his arrest and suspension. He also maintains that the events surrounding his arrest and suspension coincided with Part 1 of the Inquiry into the murder of Stephen Lawrence; and that he was made a scapegoat to minimize the MPS's 'embarrassment of the outcome of the Stephen Lawrence Inquiry.' In light of these serious allegations we have used the findings of this major Inquiry to inform our thinking and considerations on 'trust and confidence' in policing.

7.2.1 The Home Secretary announced the Inquiry into the tragic racist murder of Stephen Lawrence in the House of Commons on 31 July 1997 with the following terms of reference:

'To inquire into the matters arising from the death of Stephen Lawrence on 22 April 1993 to date, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes.'

It is recognized that the Inquiry was a defining moment in race relations in Britain; it is also recognized that the report arising out of this extensive public inquiry¹¹ was a watershed for the Metropolitan Police Service. Whilst the general consensus is that the Report performed a number of important functions for public institutions and public culture, it also has its critics. Like any other major public inquiry there will always be misconceptions about what the inquiry is *purported* to have said and what the inquiry actually said.

7.2.2 In this respect the Stephen Lawrence Inquiry Report is no different. The Report attempted to

11 The Stephen Lawrence Inquiry was, undoubtedly, one of the lengthiest inquiries into police-community relations over the last forty years.

give a balanced and judicious appraisal of the wealth of evidence, verbal and oral, submitted to it. Looking at some of the critical issues in respect of policing and the black community the Report makes it clear that the evidence presented to it about policing and the black community was less than complimentary. There is the frank admission: 'We also detected a greater degree of distrust between the police and the minority ethnic communities in the MPS area than elsewhere'12. But the Report also does a number of important things:

- it cautions against 'blanket condemnation' of the police service;
- praises the courage and dedication of most police officers:
- intimates the need for hope and optimism in the future of police-community relations.
 - **7.2.3** There is the recognition that blanket condemnation of the police is both 'unfair' and unproductive and that co-operation to defeat racism is not a one-way street:

'Furthermore blanket condemnation of the Police Service is both unfair and unproductive. Every day police officers all over this country show courage and dedication in what are often dangerous and challenging circumstances. We saw and heard senior and junior police officers at all our meetings who plainly wish to correct the imbalance which is apparent. Chief Officers who appeared before us acknowledge that action is necessary. Too many of those who decry the Police Service allow themselves to go beyond fair criticism. We simply say that there must be full co-operation on all sides to combat racism. Surely there must be optimism and hope that this will be achieved.'

Stephen Lawrence Inquiry Report, Sect. 46.26

7.2.4 Evidence presented by DAC John Grieve¹³ illustrates how lessons learned from the Stephen Lawrence Inquiry are informing and improving how the MPS police and serve London's diverse communities more effectively. Although the Lawrence Inquiry was principally about the police service, it is also impacting other public institutions in challenging and identifying 'institutional racism' which is defined thus:

'The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.'

Stephen Lawrence Inquiry Report, Sect. 6.34

7.3 Policing and The Community

Trust and confidence in an organisation can operate in two ways. There can be vertical trust – that is trust in the organisation's integrity, procedures, practices, and operational protocols. There can also be horizontal trust – that is trust and confidence among staff in each other arising out of a sense of solidarity and responsibility for each other in the demanding conditions of the job. The quality of these two types of trusts conditions and determines the prevailing culture of the organisation and the way it is perceived by outsiders.

Internal confidence affects retention and progression; external confidence affects recruitment

7.3.1 Trust and confidence in policing is a function of police effectiveness. The quality of interactions with the public, especially with visible ethnic minorities, is often a measure of the effectiveness of community policing.

There are a host of important factors, and a number of critical relationships between them, which contribute to efficient, effective and sustainable policing. Effective policing can only take place if sufficient resources are put at the disposal of the police and the police have the trust and confidence of all the public they serve.

Trust: firm belief in reliability, honesty, veracity, justice etc., of person or thing; person or thing confided in.

Confidence: firm trust; assured expectations

12 Stephen Lawrence Inquiry Report, Sect. 45.23

13 DAC John Grieve is Director of the Metropolitan Police Service Diversity Directorate DCC4 (formerly the Racial & Violent Crime Task Force CO24). The establishment of CO24 in 1998 (before the publication of the Stephen Lawrence Inquiry Report) is commented upon by Sir William Macpherson as a sign that the problem of racism in the police service 'is being recognized and tackled'.

7.3.2 The Scarman Report¹⁴ into the disturbances in Brixton in the early eighties made this clear. Two important principles emerge from Scarman. The first is that the police should consult the communities they police; the second is that the police should be answerable to these communities for their actions. These two principles firmly establish the philosophy and operational effectiveness of 'community policing' – where there is policing by consent and where there is greater police accountability. According to Scarman 'accountability renders the police answerable for what they do. Thereby it prevents them from slipping into an enclosed fortress of inward thinking and social isolation which would, in the long term, result in a siege mentality – the police in their fortress (happy as long as it is secure) and the rest of us outside, unhappy, uncertain and insecure (for we do not know what they will do, or how they will do it).'

7.3.3 In defining and defending this style of policing - 'policing with the active consent and support of the community' – Scarman reminds us that policing is, on the one hand, 'too complex a job' to be viewed in terms of a simple dichotomy between 'hard' and 'soft' policing style and that 'community policing' is too important a concept, on the other hand, 'to be treated as a slogan'15.

The police must exercise independent judgment: but they are also servants of the community. They enforce the law on behalf of the community. Indeed, they cannot effectively enforce it without the support of the community. The community pays them and provides them with their resources. So there has to be some way in which to secure that the independent judgment of the police can only operate within the law but with the support of the community.

Scarman Report, Sect. 4.60

7.3.4 The Stephen Lawrence Inquiry Report and its organisational aftermath in the MPS has reinforced and developed the concept of 'community' policing with the importance attached to prioritising 'trust and confidence' in policing. Whilst the context of the Stephen Lawrence

Inquiry Report frames the Ministerial Priority in respect of 'trust and confidence' in policing amongst minority ethnic communities, it is understood that these two core values of 'trust and confidence' equally apply to all communities.

7.4 Diversity, Culture and Policing

In the MPS the broader diversity agenda recognises the importance and effectiveness of inclusivity in its consultation and community partnerships. This is demonstrated by the range of consultative bodies and advisory groups working with the Metropolitan Police.16

Trust and confidence in policing in the capital should not just be the new mantra arising out of the legacy of Stephen Lawrence, rather it needs to be an effective operational imperative with *measurable* performance indicators under constant review. There are a number of issues in the case of PS Virdi that bring into sharp focus some of the perceptions of ethnic minorities about police procedures and practices, and the way ethnic minorities are treated both inside and outside the service. Doubtless to say these perceptions will affect their confidence in the service. Whether these perceptions are based upon actual interactions with the police or mere hearsay doesn't really matter; what is important is that the perceptions become part of the sociology of the police, constituting the reality of police performance 'in the eyes of' the community.

7.4.1 Organisationally, the MPS is demonstrating its commitment to the operationalisation and implementation of the Ministerial Priority established for all police services 'to increase trust and confidence in policing amongst minority ethnic communities'. The argument for such a priority was recognised and suggested by Sir Paul Condon, the former Commissioner of the Metropolitan Police Service. In his evidence to the Stephen Lawrence Inquiry he stated:

'I believe that the way the police meet the needs of minority ethnic communities in treating their experience of crime and harassment is of such importance that a priority is needed in order to achieve lasting change. It has become increasingly clear that nothing short of a major overhaul is required.'17

14 Lord Scarman - The Brixton Disorders 10-12 April 1981

15 Scarman Report, Sect. 5.46

16 The inquiry received evidence from the Independent Advisory Group. This group has broad representation from a range of community groups. A representative selection of London's diverse communities participated in the joint MPA-MPS Best Value Review of Consultation in 2000.

17 Stephen Lawrence Inquiry Report, Sect. 46.41

7.4.2 What was argued at the Stephen Lawrence Inquiry by Sir Paul now permeates the philosophy, policy and practice of the MPS. The MPS's Report and Plans 2000, along with the new MPA/MPS¹⁸ Policing Plan (2001/2002), reinforces this commitment to the Ministerial Priority and the wider diversity agenda.

Recommendation on Training racism awareness and valuing cultural diversity

That all police officers, including CID and civilian staff, should be trained in racism awareness and valuing cultural diversity.

Stephen Lawrence Inquiry Report, Rec. 49

7.4.3 The MPS outlined the following supporting objectives to inform the Ministerial Priority to increase trust and confidence in its 2000 plans:

MPS Priority: increase trust and confidence

Ministerial Priority

To increase trust and confidence in policing amongst minority ethnic communities

MPS supporting objectives

- a To extend the monitoring of standards of service provided by community safety units to victims of domestic violence and homophobic crime
- **b** To create a police service which is more closely representative of the community it
- c To develop a more effective use of stop and search by:
 - completing the piloting of recommendation 61 of the Macpherson report, and
 - integrating the outcomes with lessons learnt from piloting new approaches to the use of stop and search tactics
- **d** To accelerate the roll out of community and race relations training across the MPS
- **7.4.4** The diversity agenda in the MPS, and role of community relations training, play a critical role in supporting and engendering trust and confidence in policing amongst ethnic minority communities. This is reflected in the Metropolitan Police Authority's (MPA) first Policing and Performance Plan 2001/02.

Summary of Objectives, Performance Indicators and Targets

FIGURE 29

Focus on	Objective	Performance Indicator	2001/02 Target	2001/02 Performance
Diversity	To increase the strength of visible ethnic minorities (VEM) and females in the police	Difference in length of service of female officers compared to length of service of male officers	6.6% reduction	Female: 10.3 years Male: 14.4 years
		Difference between the percentage of VEM civil staff in grades 10 upwards and percentage of VEM staff throughout all civil staff grades	10% reduction	Grade 10+: 7.4% Overall: 15.5%
		Difference between the percentage of VEM officers with 5 to 10 years service at sergeant and above and other officers with 5 to 10 years service at sergeant level and above	No difference	VEM: 4.5% White: 6.4%

7.4.5 Recommendation 49 of the Stephen Lawrence Inquiry Report states:

'That in order to restore public confidence an inspection by the HMIC of the Metropolitan Police Service be conducted forthwith...'

In its inspection of the Metropolitan Police Service HMIC highlight some of the steps taken by the MPS to restore public trust and confidence in the police service.

In the report *Policing London – Winning Consent,* HMIC stated:

'Training in community and race relations is fundamental to the success of policing in England and Wales and therefore must assume a high priority in the training plans of every force.' 19 The priority attached to training and the considerable investment in community and race relation training is indicative of the MPS's commitment to respond to the Lawrence Inquiry, the recommendations of HMIC, and the four

principles set out in the Home Secretary's Action Plan. 20

7.4.6 The four principles play a critical role in improving the police service, as well as involving the community and addressing community confidence.

The principles set out to guide and inform the post-Lawrence policing agenda are as follows:

19 See Sect. 4.1

20 Stephen Lawrence Inquiry: Home Secretary's Action Plan, March 1999

i 'Partnership and improvement:

there will be involvement and consultation of minority ethnic people and their representative bodies, as well of the police, relevant local and public authorities and other organisations at all stages to ensure that there is genuine partnership running throughout the programme.'

ii 'Policing diversity: the work must help and support police officers to enforce the law in a multi-cultural and multi-ethnic Britain, better to serve the community. We need to be sure that changes will lead to real improvements. That will involve pilot projects and assessment where necessary.'

iii 'Recognising and rewarding success:

we will encourage all those involved to strive for the highest standards. We should acknowledge and praise achievement. Equally those who tolerate bad practice can expect to be identified and called to account '

iv 'Raising standards and promoting professional competence: the

investigation of serious crime of all types, whether racist or not, must be conducted to the highest possible standard. Strong leadership, high quality intelligence gathering and good organisation are all crucial.'

The Macpherson Inquiry Report into the Death of Stephen Lawrence

The Report had a major impact on the MPS and it has been active in addressing the recommendations arising from the report. In response, the MPS has taken robust action to address the failures of service identified. The racial and violent crime task force under the leadership of DAC John Grieve was set up under the title of Operation Athena and community safety units were created on each of the BOCUs. Operation Athena Day (22 March 2000) resulted in 100 arrests. Additionally, family liaison officers were provided with an improved system of training and this is being actively provided to the staff concerned. The MPS has also embarked upon additional critical incident training for staff at all levels, including corporate management board members. The MPS is now delivering this training nationally in support of the National Crime Faculty. The Home Secretary's steering group has commended the MPS initiative and leadership in this respect.

HMIC 2000/2001 Inspection of the Metropolitan Police Service

The first two principles reinforce and legitimise the direction in which the MPS was moving before the publication of the Stephen Lawrence Inquiry Report. This is seen in respect of its community partnerships, consultation and its diversity agenda. The second two principles place the imperative on the need to raise the professionalism and professional competence of the police service. Whilst the first two principles may at first seem more relevant to the Ministerial Priority to increase trust and confidence in policing amongst minority ethnic communities, the last two are equally important in terms of service delivery. Taken together these represent a real paradigm shift - a shift in the style and culture of policing in London.

7.4.7 The evidence we heard from the Metropolitan Police Staff Associations led us to believe that significant changes are taking place in the service. Fundamentally, in pursuing the Ministerial Priority arising out of the Stephen Lawrence Inquiry Report the organisational ramifications are significantly improving the police culture. There is still a great deal more work to be done, but the steps being taken over the last three years by the MPS to increase trust and confidence in the police are encouraging. This is the view shared by many individuals who gave evidence to the inquiry. The MPS staff associations – 'the insiders' – have broadly expressed similar views.²¹

The change of direction and the marked improvements are recognised by HMIC:

An audit of some of the priorities of the MPS diversity strategy illustrate ways in which the service is responding to the challenges and demands placed upon it.

Phase II of the MPS's Diversity Strategy outlines the priorities for 2001-03. Key strategic activities are enumerated in this document. These activities are intended to increase trust and confidence, as well as to ensure an effective and efficient police service responding to the demands and challenges of London's diverse communities.

Key elements of the strategy include:

- Addressing internal issues around grievance, complaints and civil actions;
- Complying with Race Relations (Amendment Act);
- Improving local consultation processes;
- Ensuring that everyone in the Met takes responsibility for discrimination;
- Providing for the diverse cultural needs of the workforce;
- Ensuring community involvement in CRR training and;
- Promoting the MPS's diversity agenda in the community and the 'Everybody benefits' message.

7.4.8 Confidence in policing will inevitably have its peaks and troughs; and this will be markedly manifest when there are controversial and *community-specific issues* and operations²² highlighted in the public domain. The *capital* that is built up in good community-police relations over a period of time can be lost in a moment of operational insensitivity on the part of the police.

Policing and Community Relations: 'In the eyes of' the Receiver

'It should be recognized that every kind of police contact has a potential impact on community relations. The views held by members of the public of their force may be based on direct experience or anecdote. These views may also vary between different communities. Although police officers may believe them to be inaccurate or misconceived, collectively they constitute the realities of policing performance 'in the eyes of' the community. This must be recognised by forces as they engage in the unending task of repair and maintenance of their relations with the communities they serve.'

HMIC, Winning The Race: Policing Plural Communities (1997), Sect. 2.8

For policing to be effective, and for this community *capital* to be maintained and increase, good practice needs to be institutionalised – it needs to be normative and perceived to be so by the community. In this general atmosphere of trust and confidence it becomes less difficult to restore the *status quo ante* when it is disturbed by disagreement over police strategy/priorities over particular community-specific issues.

7.4.9 The Panel heard evidence of the positive and responsive changes in the MPS arising out of the Lawrence recommendations and HMIC reports. A significant proportion referred to community relations and other mechanisms to increase trust and confidence. The recent HMIC inspection report on the Metropolitan Police Service recognised the robust action taken by the MPS to address the failures of service identified in

- **21** Evidence received from the Staff Focus Group suggests that the MPS is a different organisation to how is was in pre-Lawrence Inquiry.
- 22 For example, 'Stop & Search' is seen as a community-specific issue (CSI) largely affecting visible ethnic minority communities; Operation Trident is also another CSI affecting these communities.

the recommendations from the Stephen Lawrence Inquiry. These include:

- the work and leadership of DAC John Grieve in the Racial & Violent Crime Task Force:
- the creation of a community safety unit in each BOCUs;
- the training of family liaison officers;
- the development and additional Critical Incident Training (CIT) for staff at all levels.

7.4.10 The MPS is making significant improvements in the way it interacts with the diverse communities in London. In some areas of police work the MPS has the trust and confidence of communities beyond the capital²³ for its expertise and experience. Improvements in Family Liaison are noted in particular by HMIC, especially in light of the Lawrence's experience. Sir William Macpherson commented adversely on this aspect of the MPS's service delivery, resulting from the account given by Mr. and Mrs. Lawrence of their treatment by the police following the tragic death of their son in Eltham in 1993.

Mrs Lawrence stated:

'We needed some background knowledge on the sort of police procedure. We needed to know how the police investigation worked. We were not getting any of this information from the family liaison officer. No black person can ever trust the police. This idea is not preconceived. It is based on experience and people I know who have had bad experiences with the police... we are not accustomed to dealing with the police and we have no reason to trust them.'24

7.4.11 Mr. Lawrence's evidence, and his perception of their treatment by the police, was equally negative. The Inquiry was 'troubled' by some of the interactions of the police with the Lawrence family. Indeed, it noted what it observed as 'grossly insensitive and unsympathetic' behaviour displayed by one particular officer:

'All his action portray a lack of sensitivity in dealing with a bereaved family.'25

7.4.12 The evidence provided by the Diversity Directorate²⁶ demonstrates how this key aspect of

the MPS's work to increase trust and confidence in policing London's diverse communities is progressing. The Director of the Diversity Directorate told the Panel how the evidence of Mr. and Mrs. Lawrence played a critical role in shaping the recommendations on police family liaison officers²⁷, and the training and competencies needed by these officers as the important link between families and the police in critical incidents. We note the progress made by the MPS in implementing these recommendations; we also note the significant contribution of the MPS to the ACPO manual on Hate Crime (September 2000), along with the range of measures developed to promote community safety and increase trust and confidence in policing in the community.

Whatever the truth of the Virdi case, it has clearly affected public confidence in the police. Either the case demonstrated that there are racist individuals within the police service; or else it demonstrated a failure of management. In any event, the response to the case – and extended period of investigation reaching no effective conclusion, plus mistakes made in the resolution of the whole issue – did not reflect well on the MPS.

'Ultimately, the most persuasive step the MPS can take to overcome the damage cause by the case would be to discover who had actually sent the offending e-mails (race hate mail). That would both help to restore public faith in the Met's investigative abilities and it would lay to rest concerns outlined.'

Trevor Phillips, Deputy Chair of the Greater London Assembly

- 23 After the alleged racist murder in Telford the Home Secretary was approached by the McGowan family for the involvement of the MPS's CO24 to review the murder investigation.
- **24** See Stephen Lawrence Inquiry Report, (Appendices: Mrs. Lawrence Statement to the Inquiry, 11 June 1998.)
- **25** Stephen Lawrence Inquiry Report, Sect. 12.53
- 26 See MPS Special Notice 6/01, Family Liaison, March 2001. In the Foreword the Deputy Commissioner, Ian Blair, says: 'The importance of the role of the family liaison is enormous... Following the public and painful lessons of the Stephen Lawrence Inquiry, we have made huge progress forwards enhancing professional standards of the family liaison service we provide for all our communities.'
- 27 Recommendations 23-28 refer specifically to Family Liaison. Family Liaison Officers (FLOs) were recently praised by the Prime Minister for their efforts and professionalism in assisting bereaved families in New York after the September 11 tragedy. The work of FLOs is critical in building trust and confidence; these police officers are seen as 'cultural change agents' in the organisation.

7.5 Internal Trust, Confidence and Organisational Learning

7.5.1 Internal trust and confidence is a matter that needs to be addressed expeditiously by the MPS. The retention and progression of staff, especially visible ethnic minorities, will continue to have negative repercussions unless strategic measures are taken. Since the suspension of PS Virdi there have been other high profile cases involving ethnic minority officers. These cases affect public perception of the MPS. They accentuate organisational and management problems as perceived by visible ethnic minorities in the MPS.

This problem was highlighted publicly in a recent BBC Radio 428 programme entitled 'Racism in the Police Force' featuring the former Home Secretary, Jack Straw MP, the Deputy Commissioner Ian Blair and a number of Black and Asian senior officers.

Three clear messages that members of the public would have heard from the experience of ethnic minority officers in the MPS would have been that

- 'institutional racism' is still a serious problem in the MPS;
- senior ethnic minority officers are often 'damaged' and 'disillusioned' by the way they are treated by the service;
- the investigative and complaints system is 'zealous when it comes to investigate black people', but 'the same zealousness is totally absent' when it comes to white officers. It cannot be over emphasised how important it is for a dominant and highly visible public institution like the Metropolitan Police Service to engender internal trust and confidence (horizontal trust) amongst its personnel.

7.5.2 This is not just a management issue, it is also a leadership, organisational and communications issue which challenges the MPS holistically vis-à-vis its stated mission, vision and values.

Evidence heard from Sir Herman Ouseley and his report on the MPS's Diversity Strategy, as well as

the views of the staff associations, point to some of the key ingredients in this holistic approach if effective learning and organisational change is to

How people are treated, valued, and listened to in an organisation affects their performance and their perception of the 'corporate culture'. This is no less true for police officers and civilian staff as pointed out by Sir Herman's report:

'Above all, whether or not the police officers and civilian staff in the MPS see themselves as being treated equally and fairly affects their personal performance and can limit the effectiveness of policy implementation'

7.5.3 The Panel heard evidence from the police officer who supported PS Virdi during the Disciplinary Hearing in the capacity of 'friend/welfare officer'. His views resonate with many of those communicated to us by MPS staff and officers:

'I also feel that unless the police service can demonstrate duty and care to its entire staff we cannot start to build trust and confidence in the community. In these days of openness and transparency, the Metropolitan Police service (has) failed.'

Inspector Diljit Bahra, written submission, 7 May 2001

There are a number of critical themes which underline the evidence the Panel received from the MPS staff which are also highlighted in Sir Herman's review report. Some of these have been mentioned previously, but we will focus on three of them. Firstly the handling of grievances; secondly valuing of all MPS staff and thirdly, improving the organisational culture so that the MPS becomes an effective 'learning organisation'.

28 BBC File on Four 25 September 2001

7.6 Grievance and People Management

7.6.1 Handling grievances and the formal machinery and procedures that are in place come with a frustration factor and a duration faction. As a human relations dynamic, the processes often call for sense and sensitivity. Often what is needed is a *proportionate* response to the process rather than mere procedural ones. The former will call for a managerial response which is balanced, open minded and transparent. Considerable damage is done to the MPS when grievance and complaints are handled badly and managers fail to manage properly, using outdated management policies. For visible ethnic minority staff the way grievances are handled off can become the litmus test of the organisation's commitment to equality, diversity and fair treatment.

7.6.2 The problem, caused by grievance handling and its impact on the MPS in regard to ethnic minority staff is noted in Sir Herman's review:

'The most obvious indicator of Black and minority ethnic staff dissatisfaction is evidenced through the nature of complaints and grievances about racism, exclusion and discrimination. Recent high profile Employment Tribunal cases have highlighted the damaging and demoralising effects of failure to resolve conflict, confrontation, policy contradictions and unfair and unequal treatment. Specific cases reviewed over the past six months show a remarkable lack of management sensitivity and a slowness to resolve matters of concern that inevitably leads to corporational situations, resulting in poor performance, enquiries, investigations, reviews, unsatisfactory conclusions and considerable waste of resources. Processes must be put in place that are open and transparent and have the capacity to challenge and deal with failure of effective people management.'

Sir Herman Ouseley, Metropolitan Police Service, The Diversity Strategy: A Review (April 2000 Section 5.05)

7.6.3 The failure of effective people management has consequences far beyond the perceptions of the individuals concerned, it also affects the wider community and ultimately affects adversely the reputation of the organisation. When it involves

visible ethnic minority personnel it seriously militates against the recruitment and retention strategy of people from this section of the community.

This is a concern shared by HMIC:

'Her Majesty's Inspector shares the very real concerns of the MPS about its ability to meet police recruitment targets, and within that the targets for ethnic minority recruitment'.²⁹

From the evidence presented to the Panel this failure of effective people management is perceived and interpreted as a lack of care for staff – a culture in which staff feel that they are not sufficiently valued by the organisation. The characteristics of this culture, according to MPS staff are to be found in the areas of 'leadership', diversity issues and training. Leadership style in the organisation is seen as authoritarian. This authoritarian management style creates a 'parent-child relationship'. Staff feel that 'diversity' issues are not treated sensitively.

7.6.4 First line supervisors and managers are often neither confident nor competent to deal with the complex range of diversity issues. The result of this is that senior officers send out wrong messages about the overall direction of diversity policy and the extent of the organisation's strategic commitment to them.

Avoiding the Plus (People Like Us) Principle

- Promoting people like us
- Mentoring and sponsoring people like us
- Understanding people like us

7.6.5 There is a seductive tendency to view diversity in the MPS simply in terms of 'race' and gender issues, rather than a broader set of principles about 'fairness and the value of diversity'.³¹ The Metropolitan Police Staff Survey 2000 (figure 30) illustrates the wider corporate picture in regard to 'equal opportunities'. Staff want to see the 'majority culture' in the MPS changed: they want to see the development of a culture which treats its staff with 'dignity and

29 HMIC 2000/01 Inspection, Metropolitan Police Service, June 2001, p27

30 Virdi Inquiry Focus Group of MPS Staff Associations, February 2001

31 See HMIC Developing Diversity in the Police Service, Section 8.4

respect'; a culture which is 'responsive and responsible' in its care and management of its most valuable resource – its staff.

Effective training is recognised as a key ingredient to enhance police performance and competency. It was the view of staff that management training, especially in 'human resource management', was imperative if the organisation is to become a truly 'learning organisation'.

7.6.6 In light of the Virdi case and others staff felt that training and expertise in technical skills need to match that required in 'personnel matters'. Police officers, it was agreed, are not appropriately skilled or trained in personnel matters. Their training simply does not provide them with the professional 'capital' and competence to adequately deal with many of the critical internal human resources problems they face. A different knowledge-competency matrix is needed in the training programmes of officers to deal with critical 'human resource issues' which end up in employment tribunal cases than those needed and acquired for 'investigation'.

Training must address these perceived management shortcomings. A failure to do so will only compound the 'inadequacy and incompetence' of outdated management practices which result in poor performance and the 'considerable waste of resources' reported by Sir Herman Ouseley. Consideration needs to be given, according to staff, to 'employing managers from outside the police service who can impact the service' and upgrade the training for 'people management'.³²

7.6.7 The staff survey shows (see Appendix 14) that only 35% of staff agree that they have the 'opportunity to develop new skills'. Less than 50% believe that training courses attended have been appropriate to their needs.

We stated earlier that ineffective 'people management' problems have an adverse effect on the MPS and how it is viewed both internally and externally.

Given the fact that the Virdi case is still 'live' and we await the final resolution it is still premature to attempt to draw definitive conclusions. Of course, different groups and sections of the organisation have been affected differently by it. We don't know what has been the real impact on recruitment and retention on visible ethnic minorities; we don't know how significant it features in overall police 'wastage' statistics received in evidence.

7.6.8 The Panel received evidence suggesting that Black and Asian communities interest in the MPS as a career has not been adversely affected by the Virdi case.³³

What we can say is that the cumulative effects of high-profile cases like these do not engender confidence in the service, especially from sections of the community that are underrepresented in the MPS.

The view expressed by some members of staff is quite different. Staff feel that the length of time taken to settle the case has 'damaged the image of the organisation' and undermined the confidence of officers in the disciplinary procedure. MPS staff recognise that there are enormous implications for training and organisational learning arising out of PS Virdi's case.

7.6.9 Although it is believed that some senior managers are unwilling and unable to deal sensitively and effectively with grievances and other personnel matters, staff were of the view that the organisation would benefit enormously if its 'success in dealing with external issues were transferred to dealing with internal personnel matters'.

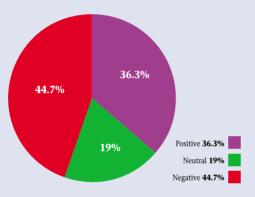
Evidence presented to the Panel suggests that there is an urgent need for 'organisational change' and 'organisational learning' arising out of Virdi's case and similar cases. One Chief Inspector questions whether there is any evidence of lessons learnt by the organisation from the Virdi case to date. Another officer suggests that 'in the interest of justice and fairness that any future internal cases should be investigated by an outside independent body and all current race and sex discrimination cases be dealt with promptly. Only then will the public and employees of the MPS feel assured and have a positive effect on recruitment in particular from the ethnic communities'.³⁴

- **32** This view was expressed in regard to improving trust and confidence 'internally' Staff Focus Group, February 2001
- **33** Written submission by MPS Personnel Department (April 2001)
- **34** Written submission to the Virdi Inquiry, April 2000

Source: The MPS Staff Survey 2000, Corporate Results – Equal Opportunities

FIGURE 30

Seven out of ten of the respondents agree that men and women receive equally fair treatment in their unit (70%) and approximately half feel that homosexuals and heterosexuals are treated equally fairly in the MPS (52%). However, only one quarter agree that all staff in the MPS are treated with respect, regardless of their rank or grade. Eighty-eight per sent of respondents have never or almost never experienced racism in their unit and 72% have never or almost never experienced sexism in their unit.



	Agree	Neutral	Disagree
All staff in the MPS are treated with respect, regardless of their rank or grade	25%	19%	57%
Men and women receive equally fair treatment in my unit	70%	14%	16%
People are treated differently in the MPS according to their ethnicity	56%	22%	22%
Homosexuals and heterosexuals are treated equally fairly in the MPS	52%	34%	14%

Prevalence of Racism and Sexism

	Very often	Sometimes	Occasionally	Almost never	Never
I have witnessed racism in my unit	1%	4%	8%	24%	64%
I have witnessed sexism in my unit	3%	8%	17%	24%	48%

7.6.10 Evidence received from the Professional Standards Department (see Appendix 13) indicates that the initial learning which has resulted from a 'paper review' of PS Virdi's case is already informing how internal investigations are conducted and monitored. And whilst we understand the above argument for an 'outside/independent' body to carry out internal investigations in the 'interest of justice and fairness', there are equally compelling arguments against 'independent' investigations.

Ultimately, it depends on what we mean by 'independent' and the requisite forensic skills, experience and expertise needed to carry out such investigations in order to retain both internal and external trust and confidence in the process.

PS Virdi has related his concerns regarding the 'independent' nature of the investigation process and its unrepresentative composition:

'All the Area Complaints Units that I am aware of do not have ethnic staff on their teams. The Units operate a culture of secrecy, understandably, but trust should not present any person from being selected. Many who work on complaints units are there because 'it's not what they know but who they know'... Many ethnic sergeants including myself have applied for such postings... Predictably, all were unsuccessful. Police officers who complain about fellow officers are ostracised or transferred. Many officers who complain about fellow officers are ostracised or transferred...

'Whilst investigating hate mail at Ealing Division it later emerged that some members of the investigating team were very close to some of the key players involved in this case. They should have looked for all the possible suspects rather than... a fall guy for the convenience of the senior management.'

PS Virdi's written submission, Section 2

7.6.11 Other officers share a number of these views, as can been seen from the following example:

'I have noted below the following points that your inquiry team should consider:

- Ethnic officers when complaining about racism are not treated as victims but as the aggressors and cause of the problem.
- When a white officer complains against an ethnic officer a lot more is done for that officer; ethnic officers are more likely to face discipline with no backing from the senior management of Police Federation.
- If an ethnic officer complains he is more likely to be ostracised by his colleagues...'

7.6.12 Two other important issues need addressing not only in regard to the Virdi case, but also in the context of their wider implications for the service. These are to do with what we generally refer to as 'organisational learning' and, perhaps more importantly, measures to avoid the inordinately long and costly employment tribunal cases in the police service.

In the MPS review of the Diversity Strategy Sir Herman Ouselev made a number of critical observations about the need for the MPS to be a 'learning organisations' i.e. an organisation that, through 'learning', works to pursue its main goals. Such a learning organisation should be reflective, flexible, supportive, scrutinous and able to learn through example - past and present - how to emanate from a new kind of leadership and in turn through a new kind of communication, with constructive change at all levels: individual, group, unit, or institutional and corporate. A 'learning organisation' would be open and accountable, learning from mistakes, understanding and implementing best practice and incorporating new ideals from all possible sources³⁵.

35 Sir Herman Ouseley, Metropolitan Police Service, The Diversity Strategy: A Review, Appendix B, p36. The seven characteristics of a Learning Organisation from this review are represented at Appendix 16.

36 See MPS Diversity Strategy: A Review p37

7.7 Organisational Culture and Learning

7.7.1 From the above and the seven characteristics of a 'Learning Organisation' outlined by the Ouseley review (these include Reflective Accountability, Accumulative and Distributive Knowledge, Leadership as Incorporated Mentoring) we can see what are some of the key challenges facing the MPS if it is to be an effective 'learning organisation'. Organisations learn in much the same way as individuals. However, because the process is a collective one the cycle is more complex.

The 'learning organisation' is by definition an organisation that makes mistakes, seeks to rectify mistakes and avoids the same mistakes again. And learning takes place when acknowledgement and rectification are processed and communicated in ways which benefit the whole organisation. The frequency of this holistic process contributes to the culture and characteristic of a 'learning organisation'. A cynical reversion of this holistic and healthy process could be one in which the concept of a 'learning organisation' is the term organisations use to cover-up their mistakes. As one of the largest employers in London, the way the MPS is viewed is likely to oscillate between these two views.

7.7.2 All 'learning organisations' have their organisational learning cycles.

In the MPS this organisational learning cycle may coincide with fundamental review or recommendations for change and improvements in specific areas of work, as occurred as a result of the Stephen Lawrence Inquiry Report. But this learning can also pre-empt and implement learning outcomes ahead of problems arising as a result of critical reflection on internal processes, procedures and priorities.

Organisational learning is not just a matter for senior managers and supervisors, it is an essential activity for all – it is not a top-down, command-driven activity but one that inspires confidence in, and ownership of, the mission, vision and values of the service by every member of staff through their active engagement and participation.³⁶

And this learning occurs when an organisation acts, responds and communicates in a corporative way.

7.7.3 We now come to the second issue raised above (section 7.6.12) i.e. of how to avoid the 'pitfalls' of employment tribunals. The evidence we received suggests that employment tribunals are not only costly and resource intensive, they also demoralise those involved and create resentment. There are no real winners in this process. PS Virdi's case demonstrates a perceived problem amongst visible ethnic minority officers with the service and the route that leads to employment tribunals.

One officer states:

'...my reservations are that the MPS are not learning lessons as more and more ethnic minority officers and civil staff are taking their cases to Employment Tribunals and the High Court because they are not getting justice internally – this will not help the MPS in the long run.'

Organisational Learning Capability (OGL) (OCL = I + G)

FIGURE 31

OCL = Organisational Learning Capability

I = ability to Innovate

G = ability to **G**eneralise this learning into good practice throughout the organisation

Staff view on internal procedure

In particular I wished to comment on the current procedures relating to internal discipline and complaints investigates. In recent years I have observed several officers being subjected to enquiries, which have been slow, bureaucratic and seemingly unfair.

'Speaking from personal experience the effect on officers can be to reduce confidence dramatically. I know family life is affected, with partners and other relatives becoming very anxious that the officer has perhaps committed an offence and may lose his job. Were a criminal offence investigated so slowly I would suggest it would become an abuse of process and would not reach a court of law.

'Clearly I understand the necessity for thorough investigations but they should not take a year or more. It appears that the need to have independent check and balances means that the referral to the C.P.S Metropolitan police solicitors and finally the P.C.A. means officers suffer delays and the public do not receive a speedy investigation, which must reduce their trust in us.

'In September I will have served for 20 years, proud years, but believe the discipline process now needs radical surgery. Perhaps only a truly and totally independent investigation will be the only way to restore public trust. I know police officers would welcome it in the knowledge that issues and grievances would be subject to a fair, balanced and hopefully speedy process. I think it is vital that officers receive the protection and respect they deserve. It appears they have been forgotten and are treated as guilty until proved innocent. It is a stressful job a the best of times but an inefficient process should not aggravate it to the extent where officers have no confidence that their word will be heard, and quickly.'

Inspector – Written evidence submitted to the Virdi Inquiry, 2 March 2001

Confidence in the grievance procedure is called into question by a number of officers who gave evidence to this inquiry, not least from the evidence submitted by PS Virdi. There is a view that officers feel insecure about, and distrustful of, the process. There is even a suspicion that 'you are guilty until proven innocent'.³⁷

PS Virdi states:

1 I have no confidence in the grievance procedure, this system is abused by divisional commanders to suppress the failings of senior officers to deal with matters effectively. Because of this ineffective system officers are now turning to Employment Tribunals to seek remedies. I have been a victim of two malicious grievances in both cases nothing happened to the perpetrating officer who made these malicious complaints.

I took out a grievance procedure for my unfair detective sergeants selection board, this grievance was then used to entrap me for the race hate mail. Again the system is used or abused the way the divisional commanders want it to. I am still awaiting for the result of my appeal (three years on).

- **2** The only option available for me was to seek justice at the Employment Tribunal as all the regulatory bodies had let me down.
 - **7.7.4** Clearly the perceived shortcomings are manifold, but they are not intractable. The question is how to avoid them in the first place and how to design a menu of options allowing senior officers to strategically intervene to resolve difficulties before they escalate into that career-damaging syndrome known as ET. This is where mutual damage is done both to the MPS and to the individuals concerned. There is a need, as HMIC³⁸ noted, for 'proportionality' in these matters.
 - **7.7.5** An organisation that is *listening* to and *valuing* all its staff is less likely to end up in Employment Tribunals. 'Good people management', argues Crompton, 'is a corner stone of a healthy organisation.³⁹

The right kind of corrective action and effective 'people management' training could help prevent ETs and the hefty payouts by the

- Police Service. Crompton outlines a number of personnel issues which could prevent the 'destructive exercise' associated with ETs. These include:
- creating a welcoming and 'working environment where everybody feels they can contribute – and their contribution will be welcomed';
- having a management style which is 'transparently open';
- avoiding a bullying style of management 'I know best syndrome';
- having a personnel culture which plays its part in achieving the vision and goals of the service;
- being proactive and not being afraid of risk management;
- ensuring that 'equal opportunities' practice and advice informs decision-making and is available to all staff
 - **7.7.6** There is a disturbing increase in the number of 'racial discrimination' ETs lodged against the MPS, as is shown in chapter 4 of the report. An increase of 68% when claims of race discrimination⁴⁰ are considered, does not bode well for an organisation trying to recruit, retain and progress more women and visible ethnic minorities. There needs to be an urgent review and assessment of all current ET cases.

- **37** These views also emerged from Paul Quinton's Evaluation of the Police Misconduct Procedures, Home Office (2001)
- **38** Oral Evidence from Dan Crompton, HMIC June 2001
- **39** Dan Crompton, paper on 'Employment Tribunals: The Pitfalls and How to Avoid Them,' (2001)
- **40** This includes all applications where race discrimination is included in the list of allegations, for example race and sex discrimination and race and unfair dismissal.

H Conclusions

1 The Investigation

- **1.1** The original incident took place in December 1997, four years ago. This was fourteen months before the publication of the Stephen Lawrence Inquiry Report and three months before ACPO issued guidance on the investigation of computer crime. It is important to recognise that practices that seem flawed today may, at that time, have been acceptable and that, since then, the MPS has introduced a number of changes into their internal procedures.
- **1.2** The Inquiry Panel had particular concerns about the following:
- handling of the original investigation locally given the sensitivity of the case;
- use of POLSA: The Panel concurred with the Employment Tribunal findings in that 'the use of a POLSA team was excessive and unwarranted':
- Care of witnesses and staff involved: The receipt of racist literature had a damaging effect on the recipients and their colleagues. This case has profound effect on working relationships which has been 'kept alive' for four years. Many members of staff at Ealing Police Station felt let down by the organisation because of:
 - a lack of personal support by senior officers and/or
 - **b** by failure of the organisation to identify the originator of the hate mail.
- The apparent absence of a review process in this case and with the ability to change direction or decide not to proceed further.
 - 1.3 In the light of the Employment Tribunal finding and evidence presented to the Inquiry, it seems to the Panel that the original investigation appeared to have concluded that PS Virdi was responsible for the racist hate mail and then set about finding evidence to prove the case. Evidence was then obtained which purported to support this allegation.
 - **1.4** The Panel were disturbed that issues raised by the Employment Tribunal were unable to be fully explored by us (due to ongoing civil litigation) and are pleased that the MPS, having conducted a paper

review, have decided to carry out a further investigation which is to be supervised by the PCA.

2 The Disciplinary Process

- **2.1** The original incident took place in December 1997. In accordance with the Regulations applicable at that time PS Virdi was dismissed from the office of Constable on 3 March 2000 by a Discipline Board constituted in accordance with Police (Discipline) Regulations 1985. As such it was a judicial proceeding governed by statutory regulations and subject to judicial review. The Panel believe that the inflexibility of the Police (Discipline) Regulations 1985 led to:
- i PS Virdi being denied the opportunity to be accompanied by his wife into the building where the Disciplinary Tribunal took place;
- ii high tension at the start of the proceedings in a legal argument as to whether the Independent Advisory Group (IAG) could observe the proceedings and the view of the Disciplinary Board and all three Counsel that the final decision to allow access to the IAG was ultra vires
- iii unnecessary bureaucracy which extended the police enquiries until March 2000¹ when the case was finally heard and the financial and personal costs in a process which resulted in:
 - appointment and attendance of three Counsel at the Hearing (one for the Presenting Officer, one for Counsel and one to advise the Board)
 - A pre trial bundle of 500 pages
 - 51 witnesses presenting their evidence
 - 4 weeks of hearing evidence
 - nearly 400 pages of long hand notes being taken by the Board Chairman
 - **2.2** The Regulations that applied at the time of the case involving PS Virdi have now been replaced by the Police (Conduct) Regulations 1999. The Panel have considered these new Regulations and the recent findings of the research carried out by the Home Office Policing and Reducing Crime Unit and are of the view that:
- The Regulations when complied with mechanistically and without common sense can

1 See 1.5.4, request by PS Virdi on 25 August 1999 to delay proceedings

lead to disadvantage to minority groups. In the light of the Lawrence Inquiry definition of institutional racism where 'processes' are factored into the notion of the 'collective failure' of organisations to provide an appropriate service. The Panel are concerned that more organic and flexible arrangement needs to seen to be operated in a post-Lawrence police culture;

- Although the burden of proof has changed to balance of probability, the police service is using a *sliding scale* in the determination of findings. The weight of evidence needed to prove a case when a potential outcome is dismissal would still require a full investigation of the facts and preparation of documentation to a standard required in a criminal case. Under existing arrangements this could take several months;
- The time taken to progress matters to a Disciplinary Tribunal Hearing is still unacceptably long;
- Findings in the recent Home Office research have indicated that 'the impact of the new procedures is relatively limited'²
 - **2.3** During the course of this inquiry the Panel observed that the Police Federation is granted facilities under their Regulations which are not afforded to other support groups. If there is under representation of minority groups within the Police Federation, there is the potential for those groups to lack trust and confidence in the support that it provides.

3 Grievance Procedure

The obligations on an organisation to have a grievance procedure are documented in Section 5.1. The Panel has concluded:

- **3.1** The Metropolitan Police service does have a procedure in place which allows its staff to raise grievances.
- **3.2** When examined against the ACAS Code of Practice:
- There is insufficient reference and guidance to the use of an informal stage and emphasis on attempting to resolve the grievance at the earliest point.

- The 'conflict' between grievance and discipline appears to be a particular issue for the police service with little advice on this issue being included in the ACAS Code of Practice. The Panel believes that by addressing the concerns made in respect of the disciplinary procedure the problems associated with this 'conflict' will be reduced.
- Use of grievance procedures is recognised as good employment practice. In a healthy organisation staff use the grievance procedure and have confidence in its use. The challenge for an organisation is not merely to reduce the number of complaints, but to deal effectively with them. Within the MPS the level of use of the grievance procedure falls below that which may be expected of a healthy organisation but is not untypical of experiences of other metropolitan police forces.
 - **3.3** During the Inquiry a lack of trust and confidence in the procedure used by the MPS was evident by:
- views expressed by staff groups during the Focus Day
- submissions to the Inquiry by minority ethnic officers
- personnel managers
- MPS solicitors
- **3.4** Staff do not use the grievance procedure because:
- they do not trust the system to be fair and impartial
- the process takes too long to be resolved
- they fear reprimand or victimisation for using it
- they choose to go directly to ET, believing that they would get a fairer treatment there
- **3.5** Managers and supervisors are reluctant to deal with cases at an early stage fearing that the matter may result in an Employment Tribunal and/or they may not be supported in their actions. This results in delays in the process, distrust in the system and too many cases remaining unresolved or requiring action at a senior level

2 An Evaluation of the Police Misconduct Procedures (Police Research Paper), December 2001

- **3.6** The Regulatory framework has promoted a culture where managers and supervisors are preoccupied with evidence and note-taking to the point where 'reasonableness', as promoted under employment legislation, is lost to procedural compliance. This is particularly evident when a grievance investigation highlights a potential act of misconduct and the grievance has to remain unresolved whilst the matter is investigated in accordance with the Police (Conduct) Regulations 1999
- **3.7** The Panel has identified good practice in other organisations that alerts senior management to potentially sensitive cases at an early stage. Mechanisms for such an early warning system do not appear to exist in the MPS.

4 Employment Tribunals

- **4.1** The MPS has seen a 10% increase in the number of staff taking matters to Employment Tribunal. This compares with a 42% increase nationally over the period 1998 to 2000. The figure in respect of race discrimination cases is significantly different with an increase of 68% (where allegations include race discrimination) compared to a national increase of 25%)
- **4.2** The Panel received views from MPS staff that because there is a reluctance to admit to 'honest mistakes' at an early stage, there are unnecessary delays in getting to the truth. This in turn has lead to:
- staff seeking redress at an Employment Tribunal
- Tribunal Proceedings becoming well progressed before the full picture is identified
- attitudes hardening when all that was wanted was an apology
 - **4.3** An officer who admits wrongdoing could face charges, and a lengthy disciplinary process, under the Police (Conduct) Regulations 1999. This process does not lend itself to a 'learning organisation' where a supportive employer may recognise that honest mistakes can occur and training, as opposed to discipline, may be a more appropriate course of action.

- **4.4** Many Employment Tribunal Cases are linked to ongoing misconduct investigations. The time taken to progress these matters, and the potential vulnerability of double jeopardy, often militates against opportunities for mediation and straight talking. Other organisations often use this as a device for resolving matters before a Tribunal Hearing becomes the only option.
- **4.5** The current arrangement for the administration of Employment Tribunal cases within the MPS has led to:
- a very high workload for the P2 Employment Tribunal and Grievance Advice Unit;
- a lack of involvement by local managers and Borough Commanders;
- poor working relationships between staff who have lodged a claim and their local managers;
- missed opportunities where early resolution was possible.
 - **4.6** There is insufficient machinery in place to review cases across functional areas and to highlight potential 'sensitive' cases to senior officers at an early stage
 - **4.7** The MPS does not appear to encourage the use of ACAS or other outside bodies to mediate Employment Tribunal cases

5 Trust and Confidence

5.1 Externally

- Poor treatment of staff in turn affects the way they treat people in the community;
- Media reporting of internal issues affects the community perception of policing;
- Erosion of trust and confidence externally undermines consultation processes which are an essential feature of effective policing.

5.2 Internally

The Panel have concluded that trust and confidence of staff in the MPS has been affected by this case

• Staff at Ealing Police Station have been particularly affected.

- Officers and civil staff from minority ethnic groups have been particularly affected
- Many staff have seen this as yet another occasion where the MPS has received bad press, following so soon after the Stephen Lawrence Inquiry.
- Staff trust each other in operational situations but appear not to trust each other when it comes to discipline and grievance
- A 'blame culture' of slavish adherence to rules and where common sense is punished if things go wrong does not make grievance resolution easy to accomplish.

I Recommendations

A Metropolitan Police Service

- 1 Regulations, particularly in regard to discipline, should be interpreted with common sense and reasonableness in an attempt to eliminate unnecessary bureaucracy and unjustified cost both financially and in personal terms.
- 2 The grievance machinery should be reviewed (as the MPS has already undertaken to do) to:
- ensure that the procedure includes the informal stage of normal managerial action;
- provide training to managers and supervisors in the use of the process and their obligations to address issues at an early stage;
- support the decisions of managers and supervisors where appropriate;
- re-launch the process and give senior officer assurance that staff who use the procedure will not be punished or victimised.
- 3 That consideration be given to a review of administration of Employment Tribunals within the MPS to encourage:
- setting up a monitoring and good practice unit capable of early intervention and for alerting chief officers to highly sensitive cases;
- removal of some of the responsibility for case management to suitably trained Personnel Managers who will work in close liaison with Borough Commanders;
- direct contact between Borough Commanders, Personnel Managers and MPS solicitors to encourage local management responsibility and the possibility for earlier resolution of cases.
- 4 Notwithstanding the constraints of the existing Regulations, the MPS should address the perceived blame culture, recognising that an early apology may be the only desired outcome and should support staff who admit to honest mistakes.
- **5** That appropriate actions arising from these recommendations should be included in the requisite action plan to comply with requirements of the Race Relations (Amendment) Act 2000 and that the MPS should produce a strategy to reassure

- the community of its commitment to comply with the legislation.
- **6** The MPS should seek to address the perceived difficulties associated with the Directorate of Legal Services, namely:
- the use of early intervention strategies to limit the number of cases going to employment tribunal;
- to ensure that the structure of decision-making, where legal advice is a critical consideration but not the final arbiter, is transparent to the MPA.
- 7 The MPS should maintain the ongoing progress and good practice identified in the last HMIC Inspection of the Professional Standards Department, ensuring that all staff regardless of their background have confidence in the grievance procedures.
- **8** A press strategy should be adopted that:
- explains how to deal effectively with race-specific and high-profile cases, using the learning from critical incident training;
- includes the principles contained in the National Union of Journalists Guidelines on Race Reporting;
- does not compromise the principles of natural justice.
- 9 Senior officers should regularly monitor and review how effectively middle and junior managers implement the organisation's policies and commitments to equality.
- **10** On conclusion of the re-investigation into PS Virdi's case, (to be supervised by the PCA) any officers deemed to have acted inappropriately should face disciplinary action.
- 11 The MPS should monitor the composition of Representatives of the Police Federation's Joint Branch Board, ensuring that concrete measures are taken to address under-representation, especially from ethnic minority groups.

B The Home Office

- 12 That the Regulatory Framework for police officers, (including terms and conditions, grievance and disciplinary procedures) should be reviewed to reflect best employment practice, encouraging the use of 'reasonableness' and eliminating unnecessary bureaucracy as well as the cost in both financial and personal terms.
- 13 The Regulations in respect of the Police Federation should be reviewed to incorporate a requirement for the constitution of Joint Branch Boards to reflect the diversity of staff within the service.

C The Metropolitan **Police Authority**

- 14 On conclusion of matters between PS Virdi and the MPS the Inquiry Panel should be invited to hear the submission from PS Virdi and to publish a supplementary report.
- 15 The MPA to require the MPS to provide progress reports on PS Virdi's return to duty.
- 16 The MPA should receive an action plan and periodical reports of how the MPS are implementing the recommendations of this Inquiry.
- 17 All Employment Tribunal cases should be monitored, assessing their financial impact as well as the likely impact on trust and confidence and on recruitment and retention of visible ethnic minorities.

D The Commission For Racial Equality

18 To review quality assurance mechanisms and management practices around caseload, auditing and delivery of an effective and professional service.

J Acknowledgements

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From the Metropolitan Police Service:

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Chief Inspector David Michael

Chief Superintendent James Howard

Chief Superintendent Peter Goulding

Chief Superintendent Sue Akers

Chris Haselden

Commander Cresida Dick

Commander Richard Cullen (retired)

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Richard Skipper; Nick Pierce; Sandra Burrows

Deputy Assistant Commissioner Andy Hayman

Deputy Assistant Commissioner John Grieve

Deputy Assistant Commissioner Peter Clarke

Deputy Assistant Commissioner Suzanna Becks

Deputy Commissioner Ian Blair

Detective Chief Inspector Steve Dann

Detective Constable Mark Gervais

Detective Inspector Noel Beswick

Detective Sergeant Colin Pearce

Early Intervention Team

Esme Crowther - Equal Opps Manager

Inspector Colin Nursey

Inspector Diljit Bahra

Inspector Glen Smyth - Police Federation

Inspector Kevin Instance

Inspector Nigel Nottidge

Inspector Roger Fits-Patrick

Mike Shurety - Director of Personnel Business

Services

Sergeant Dave Jeffries

Sergeant Kenneth MacKenzie

Sergeant Manpreet Bains

Superintendent Chris McDonald

Superintendent Mark Gore

Superintendent Steve Lovelock

Superintendent Sultan Taylor

From the Metropolitan Police Authority:

Lord Toby Harris – Chairman of the MPA Catherine Crawford – Clerk of the MPA

Cindy Butts

Julia Smith

Philip Powell

Jacqui Jones

Sudhen Swami

Other:

Ben Owusu - IAG

Jeff Crawford - IAG

Nandh Singh

National Union of Journalists

Newham PCCG

Paul Quinton - Research Officer, Home Office

Piara S. Khabra - MP for Ealing House of

Commons

Police Complaints Authority

Redbridge PCCG

Richmond upon Thames PCCG

Satinder K. Saggu

Sikh Staff Association

Sir David O' Dowd – HM Chief Inspector

Superintendents Association

Susan Taylor - Casework Directorate

Sutton PCCG

T. R. Bhutta

Trevor Phillips - Deputy Chair of the Greater

London Assembly

Venter Reynolds – Solicitors and Commissioners

for Oaths

Wandsworth PCCG

Wesley Illingsworth - Home Office

West Mercia Constabulary

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West Midlands Police - John Kilbey, Force Solicitor

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