

## **Centre for Women's Justice response to the Home Office review on the process of police officer dismissals: comments on existing discipline and performance systems**

### **Introduction**

Centre for Women's Justice (CWJ) is a lawyer-led charity focused on challenging failings and discrimination against women in the criminal justice system. We carry out strategic litigation and work with frontline women's sector organisations on using legal tools to challenge police and prosecution failings around violence against women and girls.

We have recognised expertise on the subject of police perpetrated domestic abuse (PPDA). We submitted a super-complaint on the subject in 2020, which can be found [here](#). This brought together a dossier of 19 women who had experienced domestic abuse at the hands of police officers. Since the publication of our super-complaint, we have received accounts from a further 170 victims of PPDA, and have been able to take detailed accounts from 62 of them. In 2022, the College of Policing, Her Majesty's Inspectorate of Constabulary (HMIC) and the Independent Office for Police Conduct (IOPC) published the results of their investigation into our complaint, which can be found [here](#). Please refer to our super-complaint and the response to it for further examples of the issues in the misconduct process we detail below. This document focusses on problems within the police discipline and performance systems as they relate to PPDA-related misconduct.

This document follows [our earlier submission](#) on the subject of the Terms of Reference for the Dismissals Review. We believe that, if the Home Office wants to increase the number of dismissals of officers who are unfit to serve, it is crucial that the reviewing team look at the misconduct process as a whole, including how such officers are initially identified and investigated – not just the final stages of the misconduct process and formal hearings. Significant improvement of the dismissal process will not be possible without victims' reports being taken seriously from the outset, and rigorous misconduct investigations taking place.

We will address issues in the police misconduct process in broadly chronological order below: beginning with initial recording of disciplinary matters relating to PPDA, and going on to consider investigation, decision-making, and eventual sanctions. Whilst our comments will focus here on PPDA, many of the points made would apply to any wider case involving violence against women and girls, or abuse of position for sexual gain.

It is worth noting, however, the overriding issue of policing culture which constrains attempts to use the misconduct process to tackle PPDA effectively. It is well-established that only a very small proportion of recorded PPDA complaints lead to a finding of a case to answer. Even fewer reach the stage of meaningful sanction of the officers concerned. Given the significant body of evidence held by CWJ testifying to the widespread PPDA taking place in England and Wales, it is clear that the existing misconduct system is not addressing this issue with sufficient rigour.

We believe there are key policy and legislative changes which could be made to improve misconduct outcomes in relation to PPDA: these are set out below. We would encourage the Home Office to consider more broadly the culture of policing that – as tragically demonstrated by the case of David Carrick, as well as the cases of many women who have given their accounts to CWJ - fails to take PPDA accounts seriously and acts to protect its own.

### **Section 1: Recording disciplinary matters:**

We here reiterate our request that all disciplinary matters involving PPDA are appropriately recorded. Aside from any criminal investigation, if the victim of the PPDA is a civilian, the matter should be recorded as a complaint against the officer in question. If the victim is employed by the police, the report should be treated as a conduct matter.

The super-complaint outcome report found that only around 40% of cases of reported PPDA resulted in misconduct investigations and stipulated that all reported cases should lead to such investigations. In 75 cases out of a sample of 122, misconduct was not investigated, including cases where the criminal case was referred to the CPS (which means police believed there was a reasonable prospect of conviction) and including cases of rape, coercive control and GBH. In most cases there was no rationale given for this. In cases where a rationale was given there were flawed rationales, including: the fact that the suspect wasn't charged (which is not the test for a misconduct investigation), that the criminal time limit passed (irrelevant for misconduct), and one said because a harassment warning was offered but refused. CWJ was shocked by this finding. Many of the victims we have spoken to since the super-complaint do not know what, if anything, happened in terms of misconduct proceedings against their abuser. It is sobering for them to realise that misconduct action may well have not even been considered by the force.

In addition, victims employed by the same force, where a report triggers a conduct matter, do not have a right to request an IOPC review, and therefore have fewer rights than civilians. We believe that the Home Office must bring about a change in the law to give police victims of PPDA equal rights to civilian victims. This is being reviewed by the Home Office following the outcome of the super-complaint and we were informed in February 2023 that the Home Office is engaging with partners on this. We would stress that victims of PPDA when they are outside the workplace should be treated in the same way as members of the public, as the matter is not related to their work (in contrast to the perpetrator, where the matter does reflect upon public confidence in his work).

### **Section 2: Investigating PPDA-related misconduct:**

Many women have spoken to CWJ about failures in the investigation of misconduct matters relating to PPDA. This is closely linked to failures in the relevant criminal investigations: where the criminal investigation is not rigorous, and is beset by issues including lack of diligence or even deliberate corruption on the part of the investigating officers, the linked misconduct investigation is inherently unlikely to succeed. This is due to failures in evidence gathering from the criminal investigation, which reduce or

undermine the evidence base available to the misconduct inquiry, or worse, actions by the investigating officers which make it harder for the victim to continue to engage with the investigative process (see section 7 below). In order to succeed, misconduct investigations into officers suspected of committing domestic abuse need to be closely linked with rigorous criminal investigations into any offences committed, either as joint investigations or with input from those responsible for the misconduct aspect, to ensure that evidence is properly gathered in the first place.

As was stated in the super-complaint outcome, disciplinary and criminal investigations should be conducted in parallel: the misconduct investigations should not be postponed until after the criminal investigation has been completed.

### *Corruption and collusion in PPDA-related misconduct investigations*

It is vital that rigorous misconduct investigations are undertaken not only in relation to the domestic abuse complained of, but also where there is any evidence of corruption or collusion by the officers tasked with investigating that behaviour, or involved as witnesses or in any other way. As was noted in the super-complaint outcome, “Connections between colleagues in forces do have the potential to undermine the response to PPDA. We do not believe all forces are taking this risk seriously enough. Force policies do not always provide strong enough guidance to prevent those knowing the suspect or victim from working on a PPDA case. Declarations of conflicts of interest appear to be frequently missing and we have heard of examples of cases that were being investigated by officers who knew the suspect.”

The investigation carried out in response to our super-complaint found numerous examples of victims raising concerns about corruption, collusion and manipulation of PPDA-related misconduct investigations (as well as criminal investigations).

Beyond deliberate attempts to undermine or suppress investigations into PPDA, there is also the risk of unconscious bias towards the alleged police perpetrator that can lead officers to undermine PPDA investigations or fail to treat them with the seriousness and rigour they deserve. One police officer interviewed for the response to our super-complaint referred to the concept of ‘soft corruption’. He or she said,

*“I think what there may be – more a ‘soft’ corruption. More feeling difficult, not really feeling confident dealing with a police officer. Maybe there is something about feeling some kind of affinity or empathy with a perpetrator ... It’s very awkward to deal with a colleague, particularly for domestic abuse ... If it’s shoplifting it’s quite easy to assimilate and deal with it. Domestic abuse is more complicated and it goes back to how policing is dealing with domestic abuse more generally. It’s more personal.”*

Personal links between the suspected perpetrator and the investigating officer make this even more problematic: where an officer may have worked with or even have socialised with the staff members carrying out the misconduct investigation, there is a serious risk of bias. In one account received by CWJ, a woman who is a police officer reports that the investigator at Professional Standards dealing with her case was Facebook friends with the suspect and they had worked together in the past. She asked for this investigator to be replaced, but this was refused.

In the super-complaint response, only 2 of 20 reviewed misconduct files included evidence that any investigating officer or decision maker made a formal declaration regarding conflicts of interest. Without these declarations, it is impossible to know whether or not the relevant officers were linked to the suspect. CWJ regards the risk of lack of impartiality in PPDA investigations as serious: it is as a result of this that we recommend external investigations wherever possible (see below at Section 6). Our view is that declarations that investigating officers do not have links with the perpetrator are insufficient to meet the risks of improper influence impacting on an investigation. Such risks do not solely arise in the context of investigator and perpetrator knowing one another. For example, in one case reported to us, the force concerned sought to reassure the victim that the investigation would be impartial, because it was being led by an officer who had newly joined from another force. No consideration had been given to the pressures that officer might face having joined a new force and immediately being tasked with investigating an established member of the force. The new officer would know that she would need to continue working with friends and colleagues of the perpetrator after the conclusion of the investigation and she would not have the benefit of pre-existing contacts within the force, or a pre-established reputation. This example illustrates how the issue of independence is more complex than simply ensuring a lack of personal connection between the investigating team and the accused. However, unless or until all allegations of PPDA are required to be investigated by a different force, it is essential that all officers involved in PPDA-related misconduct investigations make formal written declarations, in accordance with their statutory responsibility to avoid conflicts of interest under the Police (Conduct) Regulations 2020.

#### *Misconduct by officers in the course of the investigation*

Corruption and collusion in misconduct investigations can and should lead to misconduct proceedings against any officer who acts improperly in relation to the investigation. Investigating officers may fail to carry out effective investigations, and witness officers may refuse to cooperate fully in investigations or fail to disclose pertinent information. Investigative failings of this nature should be regarded as serious matters of lack of diligence, and/or deliberate assistance to a suspect – not mere underperformance. CWJ asserts that deliberate failings in misconduct investigations, at the level of corruption or providing improper assistance to a suspect, should be treated with the same level of seriousness as the original PPDA investigation.

CWJ refers the reviewing team to the International Association of Chiefs of Police (IACP), based in the US, which has drawn up a Model Policy<sup>1</sup> on Domestic Violence by Police Officers. In particular, the model is firm in its approach to officers who protect abusive officers. At Section IVB6.b the model states:

*“Officers who engage in the following actions will be subject to severe discipline up to and including dismissal:*

- 1. Failure to report knowledge of abuse or violence involving a fellow officer*
- 2. Failure to cooperate with the investigation of a police officer domestic violence case (except in the case where that officer is the victim)*

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<sup>1</sup> <https://www.theiacp.org/sites/default/files/all/d-e/DomesticViolencebyPolicePolicy.pdf>

3. *Interference with cases involving themselves or fellow officers*
4. *Intimidation/coercion of witnesses or victims (i.e., surveillance, harassment, stalking, threatening, or falsely reporting)."*

### **Section 3: Joining the dots between investigations**

The recent cases of David Carrick and Wayne Couzens have brought the problem of police officers who are themselves serial violent offenders into the public eye. Both cases demonstrated the propensity of officers to commit numerous offences across several different forces, over long periods of time, and despite multiple abortive criminal and misconduct investigations. The misconduct process as it currently stands is failing to identify and prevent serious serial offenders.

Though much of the information is not public, from media reporting it appears that David Carrick was subject to PPDA-related misconduct investigations no less than 4 times: in 2002, 2009, 2019, and 2021. This does not include 5 complaints by members of the public between 2002 and 2008 relating to non-PPDA matters. Despite this, in each of the three earlier investigations either no action was taken, or the matter was dealt with by simple "words of advice". Aside from misconduct investigations, he was also the subject of 6 criminal investigations between 2000 and 2021 – yet at no stage do investigators appear to have accessed material from earlier investigations and used it to inform their decision-making.

Had all PPDA complaints been linked, Carrick's pattern of offending (reported to the Metropolitan Police, Hertfordshire Police, and Hampshire Police) would have been noted sooner. Criminal and misconduct investigations in 2002, 2009, 2016, 2019, 2021 should have been taken more seriously in the context of previous reports. Had previous complaints against Carrick been identified and linked by officers in each successive investigation, the gravity and cumulation of the allegations should have lead to action to prevent further offending. Misconduct proceedings could have been escalated much sooner against Carrick with the benefit of independent review of the various allegations, preventing his continued use of his police status to perpetrate further offending.

The infamous cases of Carrick and Couzens are simply illustrations of the wider problem of failure to identify patterns of behaviour across time and across more than one victim. CWJ has received multiple accounts which demonstrate a wider problem of failure to recognise and act on multiple reports. Part of the problem is the failure by Professional Standards to respond seriously to the first account of PPDA or sexual abuse they receive. It is often only after numerous victims have made allegations against the same officer that action is taken.

One woman police officer reported to CWJ that she had had a relationship with a much older officer, who was physically abusive. After separation he stalked her and she reported the stalking and the previous abuse. She was told that he had been given a verbal harassment warning. After this, he continued to email her and leave notes in her locker despite the warning. She reported this to Professional Standards and supplied copies of messages, emails, cards and letters. She heard nothing at the time though later discovered he was given 'management advice', with no substantive disciplinary action. No criminal process took place. It was only two years later when

he was suspended after a second young officer who had been in a relationship with him reported abuse, that the matter was re-opened. Eventually in disciplinary proceedings five years later she discovered that complaints had been made against him by at least six female officers.

Another woman reported to CWJ that she had been raped by a colleague as a new police constable, during her probation period. The criminal investigation resulted in an NFA decision, and she is not aware of any misconduct proceedings having taken place. Years later having changed careers, she was informed that her rapist, who had remained employed by the relevant force in civilian roles, resigned after additional allegations of sexual assault against him by others in the workplace.

A third woman told CWJ that after she reported her partner for PPDA, five more women who had been or were still employed by the force came forward with allegations of abuse and harassment against him.

Requiring forces to appropriately record all allegations of PPDA, and review prior records connected to a member of staff under investigation, is crucial to identifying PPDA in all cases. Where reports are routinely brushed under the carpet even the most serious serial perpetrators can avoid detection. As the crimes of David Carrick and Wayne Couzens demonstrate, offenders whose more minor offending is not properly challenged can escalate to acts of gross cruelty and depravity.

CWJ believes that misconduct investigations must include a systematic search for PPDA-related intelligence held on all police systems regarding the staff member in question, including any records held by other forces. This is necessary for any suspect-focused investigation. Hand in hand with this should go an obligation on all officers to make detailed records of any PPDA matters they deal with, at any stage of the misconduct process, to allow relevant information to be accessed by other officers performing these searches.

#### **Section 4: Case to answer decision**

It is well-established that positive case to answer decisions in PPDA matters are vanishingly rare. Pointing out the huge gaps in data collection in this area, the super-complaint response noted that “the data we have indicates that few PPDA allegations result in any disciplinary proceedings or sanctions,” and that, “there are not enough PSD records to confidently estimate the number of police complaints and conduct matters involving PPDA allegations that result in misconduct outcomes.” This suggests critical flaws in the existing misconduct process, given the plentiful credible reports of PPDA received by CWJ.

One reason for the lack of positive case to answer decisions in PPDA cases is policing culture. We are concerned that police forces often act to ‘protect their own’ in cases of PPDA, and fail to take women’s accounts of abuse seriously – as demonstrated by the serial offenders section described in Section 3 above. One victim of PPDA who is also a police officer explained to CWJ that, if a PPDA victim is going through family court proceedings at the time of her allegation, officers often assume that she is fabricating the accusations in order to support her case in the family court. Myths about women

routinely making 'false allegations' are part and parcel of a culture of misogyny and should be identified as such.

*Off-duty conduct can constitute discreditable behaviour*

Another important issue is the question of whether PPDA carried out while off-duty constitutes discreditable behaviour and a breach of the Standards of Professional Behaviour. In our super-complaint, CWJ noted that negative case to answer decisions on potential misconduct were sometimes based on the view that as the abuse took place 'off-duty', it was a private matter and did not discredit the police service or undermine public confidence in policing.

In our view this approach is entirely wrong, and we are concerned about Professional Standards Departments' decision-making in this area. In our view, any off-duty conduct by a police officer that involves violence or abuse of another person is by its nature discreditable conduct. Physical violence, or abusive behaviour such as sexual assault or coercive and controlling behaviour, discredits the police service and undermines public confidence in policing regardless of the fact that it was carried out within the accused's private life. We would also apply this to dishonesty or manipulation within court processes – such as during family court proceedings. Police officers are trusted to give evidence in court and to uphold a legal system, so honesty in their dealings with legal processes is fundamental to public confidence in their role

To give one obvious example, the escalating offending of David Carrick over 20 years between 2001 and 2021, most of which took place while off-duty, has done a huge amount to discredit to police officers and policing as a whole in the eyes of the public.

Our opinion is reflected in the policies of a number of forces on dealing with police officers accused of domestic abuse. Several expressly state that domestic abuse will not be treated as a purely private matter. We consider this approach must be adopted by all forces when dealing with PPDA so that the private nature of the conduct is never relied upon as a reason to find no case to answer. Instead, upholding public confidence in the integrity of the police service and the confidence of victims in reporting domestic abuse should be the primary consideration.

Our research found a number of instances where officers accused of PPDA were not only not subject to misconduct procedures, but were promoted, sometimes to roles with lead responsibility for domestic and sexual abuse investigations. Public confidence is lost where victims have to report abuse to officers who may themselves be abusers.

The super-complaint investigation concluded that undue weight was placed on the fact that an incident was off-duty when deciding if there is a case to answer. The IOPC is expected to issue guidance that undue weight should not be given to this when deciding if there is a case to answer for misconduct.

CWJ remains concerned that this approach is unduly vague, and that firmer guidance is needed stipulating that the fact that an incident of abuse that took place off-duty should never be a basis, in itself, for dismissing a misconduct matter.

## **Section 5: Supporting the victim to stay with the process**

Disciplinary action against officers who have committed misconduct will only succeed if those who have reported the conduct maintain their support for the investigation, the disciplinary process and ultimately are prepared to give evidence at a misconduct hearing. For such cases to proceed it is essential that there is positive engagement with the victim, during what is always an extremely stressful time for her. It is well known that domestic abuse cases have a particularly high attrition rate and therefore care should be given to ensure that victims feel supported and that they have confidence in the process.

### *Keeping the victim informed*

We are concerned by the number of cases reported to CWJ where women heard nothing about whether misconduct matters were under consideration in circumstances following a decision not to bring charges in the criminal investigation. Many victims are being left without any information about whether an investigation into misconduct is being considered and whether any disciplinary action has been taken against their perpetrator. Please see pages 22-24 of our super-complaint for numerous examples of this.

In addition, women police officers and other police employees who report abuse do not have the formal status of a complainant in the conduct matter in the way that a complainant in the police complaints system has. Many of the police officers who spoke to us as victims of PPDA were not aware of any misconduct investigation taking place in their case and, in those cases where there was some form of investigation, police officer victims were often not informed of the outcome, or were provided with information in an ad hoc or informal way. We consider that there should be a duty to treat a police officer who reports a conduct matter in the same way as a civilian complainant, to report back to her on what steps are being taken and to inform her of the outcome of the conduct matter.

### *Protecting complainants from victimisation in the workplace*

Women police officers who report PPDA are doubly vulnerable during the misconduct process: as well as lacking the rights of civilian complainants to be kept informed, they can also face victimisation and discrimination during their continued employment in the police force. This is particularly so where, as is often the case, the victim is of a lower rank than the accused male officer. Measures must be put in place to protect women in the police force from the ostracization and bullying often experienced by those who report PPDA.

One woman who disclosed rape and domestic abuse by her former partner, a police officer, became the subject of rumour and gossip in her force. She was accused of lying by other officers both verbally and on social media. This was reported to the Professional Standards Department but no action was taken. Another woman reported significant bullying after she reported abuse: a wooden cross marked "in remembrance" was left in her tray, comments were made implying she was mad, and



three male officers drove with her to a forest in the early hours, suggested a cigarette break and then drove away, leaving her alone for 30-45 minutes.

There are also serious and long-term consequences for victims' careers: as well as bullying and ostracization at work causing psychological harm that forces many to take extended sick leave, we have received numerous accounts of employment opportunities being blocked as a result of reporting PPDA. One woman described how, after ending her relationship with a senior officer and reporting him for abuse and stalking, she applied to the firearms department after being encouraged to do so, but was refused at the initial stage. She later found out from his new partner that he boasted that he had blocked her application by speaking to friends and colleagues. He also told others that she was mad and she felt other officers did not want to work with her.

In the most extreme cases, women police officers are actually targeted with retaliatory conduct matters after they have reported PPDA. One woman described how she reported an ex-partner who was a senior officer for assault and rape. She provided her phone to the investigation and shortly afterwards she herself was arrested at home in the early hours, had her home searched and electronic devices taken. She was then interviewed about the fact that in a Whatsapp group with friends she had shared confidential information about an individual that she was aware of through her policing role. She was suspended from work and faced gross misconduct charges before a disciplinary hearing. She was found guilty of a data breach, and although there was no finding of dishonesty she was dismissed from the force. She had had no prior complaints against her and her barrister had advised she would receive a warning at most. Her ex-partner was not arrested and not interviewed about the assault and rape allegations for a year, in contrast to her immediate arrest in a dawn raid.

Another female officer was subjected to sexual assault by a higher-ranking officer. She confided in a colleague who reported this without her knowledge. She initially declined to make a formal report, but was pressured to do so. She was informed months later that no further action was being taken against her assailant. She, however, was accused of perverting the course of justice by making a false allegation and became the subject of misconduct proceedings.

Cases like these create a serious deterrent to female officers reporting PPDA. They are one of the most significant abuses of power PPDA can give rise to. If serious action is not taken to protect officers from this kind of bullying and discrimination during the misconduct process, victims will be less likely to support existing misconduct investigations, and more likely to avoid reporting in the first place. This behaviour should be regarded as seriously as collusion or improper assistance to the suspect in its ability to subvert the misconduct process and distort outcomes. The Home Office must consider corrective action to ensure the misconduct process does not continue to be manipulated by perpetrators of PPDA.

#### *Enabling victims to give best evidence at misconduct hearings*

Misconduct hearings, while rare in cases of PPDA because of the issues detailed above, are evidently a critical stage in any misconduct process. It is vital that support is provided to victims of PPDA to ensure they can give their best evidence at hearings.

CWJ stresses the importance of providing special measures to victims where appropriate: these could include screens, intermediaries and being able to watch the proceedings via video-link where this is requested. We would also suggest that misconduct panels should be supportive of the attendance of domestic violence support workers where the victim requests this.

We also wish to reiterate the importance of ensuring that the victim can not only give her evidence, but also understand the proceedings. In one case involving a vulnerable deaf victim, a sign-language interpreter was provided only during the victim's own witness testimony. No interpreter was provided to allow the victim to listen to and participate in the remainder of the hearing, until her solicitor intervened.

We would also suggest that Professional Standards Department investigators, as part of their duty to keep victims informed about the progress of the misconduct investigation, meet with victims prior to any misconduct hearing to explain what the process and the role she might be asked to play.

## **Section 6: External investigations**

### *Meeting existing statutory requirements*

CWJ is deeply concerned that existing statutory guidance for referral of PPDA-related conduct matters to the IOPC is not being met. The existing statutory guidance requires that mandatory referral to the IOPC is made where the complaint or recordable conduct matter includes allegations of conduct which constitutes:

- A serious assault;
- A serious sexual offence;
- Serious corruption, including abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship;
- Criminal offences or behaviour liable to lead to disciplinary proceedings and which, in either case, is aggravated by discriminatory behaviour; or
- Complaints or conduct matters arising from the same incident as one where conduct falling within the above criteria is alleged.<sup>2</sup>

In our view, the vast majority of PPDA-related misconduct matters would meet the above criteria. The Home Office Guidance on Controlling or Coercive Behaviour acknowledges the gendered nature of domestic abuse: "Controlling or coercive behaviour is primarily a form of violence against women and girls and is underpinned by wider societal gender inequality."<sup>3</sup> This is also reflected in caselaw<sup>4</sup>. The discriminatory nature of the vast majority of PPDA should mean that such cases fall within the fourth bullet point above. Further, in our view, the last bullet point should be

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<sup>2</sup> IOPC Statutory Guidance 2020, p57. Accessible here:

[https://www.policeconduct.gov.uk/sites/default/files/Documents/statutoryguidance/2020\\_statutory\\_guidance\\_english.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/statutoryguidance/2020_statutory_guidance_english.pdf)

<sup>3</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/482528/Controlling\\_or\\_coercive\\_behaviour\\_-\\_statutory\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf) [22]

<sup>4</sup> *Volodina v Russia* (No.1) Application 41261/17 9 July 2019 [110]; *A and B v Georgia* Application 73975/16, 10 February 2022 [48] & [49].

read as encompassing matters in which a complaint arose about how the Professional Standards Department had investigated a complaint of PPDA involving physical or sexual abuse. The guidance should be strengthened to make this clear. In the meantime, the IOPC guidance notes that, where there is doubt about whether a complaint or recordable conduct matter must be referred, they encourage referral.

As such, mandatory referrals to the IOPC should be common in PPDA matters – this does not appear to be the case and we would welcome Home Office scrutiny of the reasons for this malfunction in the existing misconduct process.

Voluntary referrals to the IOPC can also be made in any other case, where, despite not meeting the mandatory referral criteria, the gravity of the subject matter or exceptional circumstances justify referral.<sup>5</sup> The IOPC actively encourages referrals of this nature, and gives the suggestion that this would be appropriate in cases where the relevant conduct “*could have a significant impact on public confidence, or the confidence of particular communities, or the appropriate authority otherwise feels there is a need for independent involvement in the investigation.*”

Voluntary referrals to the IOPC can therefore also be made in any case of PPDA where it is considered that the requirements for mandatory referral are not met.

Scrutiny by the IOPC is important, because in many of the cases of PPDA involving coercive and controlling behaviour reported to us, the investigating officers have shown a very concerning lack of understanding of the nature of that offence and of its potential significance as a risk factor for repetition and escalation in the context of both the perpetrator’s professional and personal life. In many cases where there have not been standalone offences of sexual or physical assault, the pattern of coercive and controlling behaviour has been dismissed as “unpleasant”, or “bullying” “but not criminal” and not such as to justify disciplinary proceedings. This is so, even in cases where the victim has presented evidence of a significant history of threats, humiliation, intimidation and financial and emotional control, which has had (and in many cases continues to have) a serious effect on her, including in some cases recognised psychiatric injury. The abuse of power inherent in this type of controlling and coercive behaviour is of significant relevance to the perpetrator’s ability to perform his role as a police officer and the fact that it is frequently being dismissed as not amounting to a criminal offence or as not justifying disciplinary proceedings means that red flags are being missed.

Further, in our view, all matters in which the suspect officer himself works for the Professional Standards Department should be voluntarily referred, whether the person is under investigation for the abuse reported, or in relation to how the investigation into the abuse was conducted. When investigations are carried out by PSD officers and the person under investigation works in PSD there is absolutely no trust and confidence by the complainant. In a recent case where a victim sought to make a complaint against an officer working in his force’s PSD, she was told the complaint had to be investigated within the officer’s own department.

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<sup>5</sup> *Ibid*, p63

CWJ recommends that the Home Office improve guidance to ensure all police forces rigorously apply the existing referral criteria, to ensure a greater proportion of PPDA matters are given the independent scrutiny they require. We would also encourage the Home Office to consider updating the existing guidance to include PPDA as a discrete category within the mandatory referral criteria, to avoid cases slipping through the net as they appear to be currently.

We would further note that, wherever the criminal investigation has been referred to an external police force, the related misconduct investigation should also be carried out by the same external force. As noted above, misconduct and criminal investigations are closely linked and should operate in parallel: it is logical that they should be handled by the same force. We recognise that, as the employer of the suspected officer, the original force will be required to consider what, if any, disciplinary action to take at the conclusion of the misconduct investigation. However, such decisions can only be effective if they are founded on a rigorous and independent investigation. The misconduct investigation should be subject to the same rigour and independence as the criminal investigation.

#### *Implement independent external investigations for all PPDA-related misconduct*

CWJ wishes to reiterate our firm view that all PPDA-related misconduct should be dealt with independently, by the IOPC or at the very least by a force unconnected to the suspected perpetrator. As explained above, in the majority of cases existing mandatory referral criteria already requires referral to the IOPC. However, we propose that all misconduct of this nature should be dealt with externally.

We note that the super-complaint outcome report included a recommendation to Chief Constables that it may be appropriate to refer a case for external force investigation when either there are concerns that truly independent investigators cannot be found in force, or where victim trust and confidence cannot be secured another way. Ensuring victim confidence in the misconduct process is crucial to improving outcomes, and we would recommend that victims are asked whether they prefer their allegation to be investigated externally.

Decisions on misconduct are generally based on the evidence gathered in the criminal investigation, and the potential for various kinds of bias in favour of the accused officer is just as present as in any other part of the process. There is also a particular conflict of interest when a force has to consider whether to discipline an officer for discrediting the police force, as disciplinary action will expose the force to wider knowledge of the discreditable behaviour.

A specialist unit dealing with PPDA within the IOPC could mitigate the inevitable bias caused by an internal investigation. It could also develop expertise in this inherently challenging area, and foster consistency between forces in their approach to off-duty conduct and PPDA as a whole.

#### *PPDA as a key area of focus for the IOPC*

We also note that, following CWJ's super-complaint, the IOPC has adopted complaints relating to domestic abuse cases as a thematic area attracting a particular focus. The

oversight role in all PPDA-related misconduct matters which we propose above would dovetail well with this.

As a result of the IOPC's stated focus on PPDA, we anticipate that following the super-complaint outcome there should be a considerable increase in the number of IOPC investigations of PPDA, with points of learning being identified and applied across all forces. The IOPC should be monitoring the number of PPDA referrals it receives, as well as the proportion that are handled as independent investigations by them, and the results of these. The College of Policing and HMICFRS should be required to consider the learning arising from these investigations, and to apply this to its guidance and inspections of forces. We hope that this will lead to improvements in individual Professional Standards Departments when local investigations are carried out. We would encourage the reviewing team to scrutinise whether these developments are taking place.

## **Section 7: Sanctions**

### *PPDA to be regarded as a serious conduct matter with appropriate penalties*

Following CWJ's super-complaint, the College of Policing introduced new [misconduct outcomes](#) guidance which stated that misconduct involving violence against women and girls should always be taken very seriously: "Violence against women and girls perpetrated by a police officer, whether on-duty or off-duty, will always have a high degree of culpability, with the likely outcome being severe." It is imperative that this guidance is robustly applied: without officers coming to understand that real consequences will flow from PPDA, the misconduct process will fail to create a real deterrent to this behaviour. To quote the College of Policing's guidance once more: "It is imperative that policing makes it clear that misconduct of this nature is wholly unacceptable, setting a clear expectation as to the seriousness to which these matters are treated."

We have been told of examples in which significant domestic violence committed by police officers, when progressing through the misconduct process, is downgraded from gross misconduct to simple misconduct – meaning that the officer cannot be dismissed. In one case reported to us, an officer was investigated for multiple counts of domestic abuse, sexual violence, and stalking against a fellow officer. The CPS eventually discontinued criminal proceedings against him. Despite clear evidence of behaviour that falls below the professional standards expected of a police officer, the initial charges of gross misconduct were downgraded to simple misconduct, and the officer received only a final written warning. This enabled him to make further contact with his victim at work, and even to receive a promotion to a higher rank. This has had a significant impact on the victim and her safety.

### *Lack of meaningful penalties*

We are concerned that that even if officers are found to have committed gross misconduct they can avoid meaningful penalties.

The super-complaint investigation considered 47 misconduct matters. Of these, only 13 officers were found to have a case to answer for misconduct or gross misconduct.

Of these, only seven were referred to some kind of disciplinary proceeding, with the remainder dealt with via management action or no sanction at all.

The absence of meaningful sanction is partly due to the existing pensions regime. Officers faced with misconduct proceedings regularly choose to retire during the misconduct process, enabling them to access their full pension and evade any practical sanction. Retirement is an effective 'get out of jail free' card for officers who have committed acts of gross misconduct. Despite the amendment to regulations in 2015 to restrict officers' ability to retire where they are accused of gross misconduct<sup>6</sup>, in practice unfortunately officers do still appear to avoid consequences of their actions through retirement. In a recent case of gross misconduct involving sexual harassment of a female colleague by senior officers of Gwent Police, the panel stated that former Chief Superintendent Mark Warrender would have been dismissed had he not retired from the force prior to the outcome of the hearing.<sup>7</sup> The conduct complained of took place in June 2019, more than four years after the introduction of the new regulations. In a January 2023 statement, the IOPC stated that two retired Met officers who failed to properly investigate complaints against Carrick for PPDA in 2002 may have committed misconduct, but no further action would be taken given their retirement.<sup>8</sup>

Where an officer has already retired, although hearings can take place if their alleged behaviour meets the threshold for gross misconduct, no meaningful sanction is currently available to a misconduct panel, even where a positive finding of gross misconduct is made. This is because legislation surrounding the forfeiture of police pensions is restrictive.

At present, police officers can only be required to forfeit any part of their pensions where:

- They have been convicted of treason or offences under the Official Secrets Acts 1911 and 1939 and sentenced to a period of imprisonment of at least ten years; or
- They have been convicted of an offence committed in connection with his or her service as a member of a police force, which is certified by the Home Secretary either to have been gravely injurious to the interests of the State, or to be liable to lead to a serious loss of confidence in the public service.<sup>9</sup>

CWJ would submit that PPDA, particularly in extreme cases, should be considered liable to lead to a serious loss of confidence in the public service. Regrettably, except in highly publicised cases such as those of David Carrick or Wayne Couzens, we are not aware of this power being used to sanction officers who are no longer employed for their violent or abusive behaviour. In Freedom of Information Act data published by

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<sup>6</sup> Regulation 10A of the Conduct Regulations (as inserted by the Police (Conduct) (Amendment) Regulations 2014) prevents the officer concerned from giving notice to resign or retire where an allegation of gross misconduct has come to the attention of the appropriate authority.

<sup>7</sup> 'Officers found guilty of gross misconduct over retirement party incident', *Police Professional*, 07.09.2022, available here: <https://www.policeprofessional.com/news/officers-found-guilty-of-gross-misconduct-over-retirement-party-incident/>

<sup>8</sup> <https://www.policeconduct.gov.uk/news/iopc-statement-following-pc-david-carricks-guilty-pleas>

<sup>9</sup> Home Office Police Pension Forfeiture Guidance, February 2021. Available here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1027746/Pension\\_Forfeiture\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1027746/Pension_Forfeiture_guidance.pdf)

The Guardian in January 2023, it is suggested that only 42 applications for forfeiture of police pensions were approved in the five years to November 2022.<sup>10</sup> We have no data as to what proportion, if any, of these matters related to PPDA.

CWJ considers that applying serious consequences to officers and former officers who engage in PPDA or cover up for officers who do, can create an effective deterrent to discourage this behaviour and promote a much-needed cultural shift in policing. We would encourage the Home Office to review current guidance on pension forfeiture and scrutinise the limited attempts currently made to reduce the pensions received by those found guilty of gross misconduct.

## **Recommendations from Centre for Women's Justice:**

### **1. Misconduct investigations should run parallel to criminal investigations**

As recommended in the outcome to our super-complaint, misconduct investigations should be conducted in parallel to, rather than after the conclusion of, criminal investigations. Where the criminal investigation is being carried out by an external force or the IOPC (which we would recommend in all alleged PPDA matters, to ensure impartiality), that same external force, or the IOPC, should carry out the linked misconduct investigation.

### **2. Requirement for declarations of conflict of interest in misconduct investigations**

CWJ believes that all PPDA misconduct allegations should be referred to the IOPC. However, where such investigations are conducted by the accused's own force, it is essential that all officers involved in PPDA-related misconduct investigations make declarations of any conflict of interest, in accordance with their statutory responsibility to avoid such conflicts under the Police (Conduct) Regulations 2020.

### **3. Requirement for systemic search of police data systems for evidence of other PPDA allegations and investigations**

CWJ recommends misconduct investigations include as a basic requirement a systematic search for PPDA-related data held on all police systems regarding the suspect. CWJ also recommends that recording requirements at all stages of PPDA matters are strengthened, to ensure that relevant data is available to officers performing these searches, and to enable effective monitoring of outcomes in PPDA cases.

### **4. Improved guidance on off-duty conduct**

CWJ recommends that clear guidance is issued stipulating that the fact that an incident of abuse took place off-duty should never be a basis, in itself, for dismissing a misconduct matter.

### **5. Keep the victim informed**

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<sup>10</sup> London mayor to ask Home Secretary to strip David Carrick of police pension, *The Guardian*, 18.01.23. Available here: <https://www.theguardian.com/uk-news/2023/jan/18/jenrick-backs-efforts-strip-serial-rapist-david-carrick-metropolitan-police-pension#:~:text=Government%20guidelines%20state%20that%20pensions,connection%20with%20their%20police%20service>.

We consider that in PPDA cases where the complainant is a police officer, there should be a duty to treat the complainant in the criminal case as a complainant in a misconduct matter and report back to her on what steps are being taken and the outcome of any misconduct matter.

**6. Protect female police officers from workplace bullying as a result of reporting PPDA**

CWJ encourages the Home Office to put in place measures to protect officers from the ostracization and bullying often experienced by those who report PPDA, including retaliatory misconduct proceedings.

**7. Enable victims to give best evidence at misconduct proceedings**

We encourage the Home Office to ensure victims have access to special measures at misconduct hearings where required, including supporting the presence of domestic abuse support workers where requested.

**8. Ensure that all PPDA-related misconduct is investigated independently by either the IOPC or an external force.**

Ensure that police forces meet existing statutory mandatory referral criteria to the IOPC when dealing with PPDA-related misconduct, and carry out voluntary referrals in all other PPDA cases. Going forward, the mandatory referral criteria should be expanded to expressly include all PPDA matters.

**9. Restrict the roles of officers facing PPDA allegations to prevent interaction with victims of domestic and sexual abuse**

Given the duties owed by forces to all victims, we propose that in all cases the policing role of the accused officer be assessed and restricted so as to prevent such officers working with vulnerable victims.

**10. Ensure that meaningful sanctions are available for former and current officers found to have committed misconduct**

We would encourage the Home Office to review current guidance on pension forfeiture and scrutinise the limited attempts currently made to reduce the pensions received by those found guilty of gross misconduct.