

**Police Action Lawyers Group**

Submission to the Home Affairs Select Committee Inquiry concerning Race and Policing

6 JULY 2020

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## **POLICE ACTION LAWYERS GROUP**

The Police Action Lawyers Group (PALG) is a national organisation comprised of lawyers who represent complainants against the police throughout England and Wales. PALG was formed in 1991 and its members are concerned first and foremost with the principal objectives of the complainants we represent: to ensure that the police are held accountable for their conduct through all available avenues, including: the police complaints system, judicial review, compensation claims and the criminal justice system. Although, historically, our primary focus has been on police malpractice, PALG members also represent clients in respect of misconduct by other state authorities, particularly those with the power to detain and use force, including the prison service and immigration service.

PALG members hope that by upholding our clients' rights and highlighting poor practice, improvements will be made to police services and other state authorities against whom our clients bring claims and complaints. In our experience, the primary objective of many of the clients who instruct PALG lawyers is a desire to ensure that the responsible police officers are held accountable for their conduct, and that lessons are learnt and improvements made so that others do not suffer the lack of care, abuse, indignity and ill-treatment that they have suffered.

PALG members have been involved with numerous notable police complaint cases, civil claims and inquiries. These cases typically involve allegations of false imprisonment, assault and malicious prosecution (often aggravated by discrimination) but are not limited to such work and also include claims under the tort of misfeasance in public office and discrimination claims. An increasing area of interest is in relation to the police failure to adequately investigate crimes our clients have reported and in particular sexual crimes and domestic violence. Some of the most distressing cases we deal with are on behalf of families whose relatives have died in police custody. Many of our members are also active within the Inquest Lawyers Group.

Due to our large and varied membership, the collective experience of PALG is considerable. We include lawyers who act on behalf of victims of misconduct by police officers from virtually every force in England and Wales. All of our work as an organisation is voluntary and we receive no funding of any kind. The group is motivated by a desire to achieve the best possible outcome for our clients, many of whom have suffered the most serious abuse at the hands of the police.

As a group we have also been in a position to liaise with other organizations representing complainant interests, including INQUEST, Liberty, Justice and MIND. We have also developed a lobbying role. To that end our members have attended before Select Committees, met with Ministers, and prepared regular briefings.

More information can be found on our website ( <http://www.palg.org.uk/> ).

## INTRODUCTION

1. On 25 May 2020, in Minnesota, USA, George Floyd, became the latest Black person to die at the hands of the state in what the prosecuting authorities rightly see as murder. It is familiar not only to those in America, particularly in African-American communities. Much of what we already know about the circumstances of Mr Floyd's death is lamentably familiar to Black communities in the United Kingdom too.
2. It is familiar because it is symptomatic of the institutional racism that has been a reality of policing in this country since long before the seminal conclusion of the Macpherson Inquiry on 24 February 1999. There is no doubt that much changed as a result of the inquiry's work, given momentum by the relentless commitment of those who campaigned for justice in the name of Stephen Lawrence. It is a matter of deep regret that two decades on, as we seek to illustrate below, much of the promise of that defining moment has not been realised. If there had been any doubt about this, it is surely dispelled by the COVID-19 pandemic, which has provided a microcosm of the enduring inequality across society, including in policing.
3. The last few months, have seen:
  - a. The restraint of Kamyimsola Olatunjoye, by several officers in South London;<sup>1</sup>
  - b. The tasing of Ziggy Mombeyarar in Greater Manchester;<sup>2</sup> and
  - c. The tasing of Jordan Walker-Brown, paralysed in the fall from a wall that followed.<sup>3</sup>
4. We also note with concern reports of heavy-handed policing of anti-racism protests in the wake of George Floyd's murder, with some protesters kettled for several hours and others shown being charged by mounted police officers.<sup>4</sup>
5. In each of these flashpoints we see themes that have run through our casework over decades which can be summarised simply as: over-policing and under-protection of Black communities and other communities of colour.
6. With all of this in mind, we are grateful to have the opportunity to provide evidence to the Home Affairs Select Committee – particularly having been afforded a short extension of time to do so.
7. We are mindful that the Committee is picking up where its predecessor committee left off in the last Parliament. We have taken note of the call for evidence on the Committee's

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<sup>1</sup> See for example: Naomi Ackerman, "[It has always happened here' Calls for justice over video of Black Londoner shouting 'I can't breathe while pinned to the ground by police.'](#)", *The Evening Standard*, 2 June 2020

<sup>2</sup> See for example Neal Keeling: "[Police Watchdog launches investigation after man tasered in front of young child at petrol station](#)", *The Manchester Evening News*, 14 May 2020

<sup>3</sup> See for example: [Jasmine Andersson, "Black Lives Matter protests: London demonstrators 'were kettled, photographed and had names taken by police'", \*Inews\*, 8 June 2020.](#)

<sup>4</sup> See for example: Léonie Chao-Fong, "[Mounted police charge anti-racism protestors at Black Lives Matter Protest](#)", *The Huffington Post*, 7 June 2020

website and have endeavoured to tailor our submission appropriately. Similarly, we have reflected on the evidence already given to the Committee in order to avoid duplication where possible.

8. That said, there are issues which warrant repetition and emphasis, particularly at the moment. We, on behalf of our clients, feel strongly that this is a point in time where scrutiny of policing and the opportunity for lasting change is higher than it has been at perhaps any other time in the last two decades.
9. It is because of the significance of this moment that a working group of PALG was formed in order to make this submission to the Committee, which is informed throughout not only by bare statistics but also with the colour of the experiences of our clients.
10. A full list of the members of the working group is set out in an appendix to this submission, for the Committee's information. It may be of particular interest to the Committee to note that we have been able to draw on the extensive experience of practitioners who have represented individuals and their families in all of the leading cases on police accountability – including colleagues who have represented the Lawrence Family, including during the Macpherson Inquiry. Therefore, we hope to assist the committee with direct experience of the issues raised by and since the conclusion of the Macpherson Inquiry.
11. We also wish to express our thanks to other PALG colleagues for their contributions to this submission and to acknowledge the relentless commitment of the individuals and families we represent, who have often been thrown into the role of campaigners at the height of trauma (and in many cases grief), but who never lose sight of their ultimate aim: to stop others having to do the same after them.

#### **IMPLEMENTATION OF MACPHERSON RECOMMENDATIONS**

12. We open our submission where the Macpherson Inquiry left off, by reflecting on the recommendations he made. We are concerned that a number of the recommendations have not been implemented or not implemented satisfactorily. Whilst there are more that we might express views on, we focus our submission on those recommendations that are most readily informed by our work as claimant lawyers specialising in police actions.

#### Transparency

13. The original 2019 terms of reference indicated that the Committee welcomed written evidence on the 'progress made to date against any of the 70 recommendations made by the Macpherson Inquiry'.<sup>5</sup>
14. We note that in relation to a previous inquiry by the Committee, timed to coincide with the ten year anniversary of the publication of the Macpherson report, the Home Office submitted that 67 of the 70 recommendations had been implemented, fully or in part.<sup>6</sup>

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<sup>5</sup> House of Commons, Home Affairs Select Committee, 'The Macpherson Report: Twenty Years On', Terms of Reference (12.12.2018)

<sup>6</sup> House of Commons, Home Affairs Select Committee, 'The Macpherson Report – Ten Years On' (14.07.2009), p30

That assertion may not sit easily with the continued need for an inquiry still examining that issue in 2020.

15. In the 2019 HASC inquiry, Baroness Lawrence gave evidence to the effect that she had *'tried to find information that sets out, around the 70 recommendations, where we have moved on, how many recommendations have been implemented, be it in the police, be it in schools, and I found it really difficult to find anything'*.<sup>7</sup>
16. We find ourselves in the same position in 2020: accessing reliable information in relation to the implementation of Macpherson's recommendations is difficult, thus any objective verification of the assertions is challenging. This is a concern that has been raised by the Institute for Government regarding scrutiny of the implementation of public inquiry recommendations generally.<sup>8</sup> Millions of pounds are spent on public inquiries in an attempt to learn lessons and implement change where necessary. We commend the work of the Institute for Government to this Committee and **suggest that it considers the introduction of a tracker or 'RAG' or 'traffic light' system to provide transparency as regards the 'successful' implementation of the Macpherson recommendations.**

### Institutional Racism

17. The most far-reaching conclusion from the factual findings in the Macpherson report was its acknowledgement and description of the Metropolitan Police as institutionally racist. The current Metropolitan Police Commissioner has told this Committee as part of its inquiry that, in her view, the Metropolitan Police is an *'utterly transformed'* organisation from that of twenty years ago, that she no longer believes that it is institutionally racist, and that moreover *'it is not a useful term at all now'* which instead *'puts people off from engaging with the police, which we need, which reduces trust in the police'*.<sup>9</sup> Indeed, we note that the Commissioner has repeated that assessment in providing her response to the Black Lives Matter protests.
18. However, even if the Commissioner's assertion of revolutionary progress at the Metropolitan Police is taken at face value - and it is the thrust of our submission that, despite many areas of progress, it should not be - there appears to be no alternative explanation to the patterns borne out through the following statistics, that despite constituting 3.3% of the total population, Black people:
  - a. constitute just 1.2% of the total number of police officers<sup>10</sup> and remain disproportionately represented in the lower ranks;<sup>11</sup>

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<sup>7</sup> Baroness Lawrence, oral Evidence to Home Affairs Select Committee, 'The Macpherson Report – Twenty Years On' (5.02.2019)

<sup>8</sup> Institute for Government, 'How Public Inquiries Can Lead to Change', 12.12.2017

<sup>9</sup> Home Affairs Select Committee, Oral evidence: The Macpherson Report: Twenty Years On (10.07.2019)

<sup>10</sup> Government statistics, Police workforce, 4.10.19

<sup>11</sup> Written evidence submitted by the National Black Police Association to the Home Affairs Select Committee, p 2

- b. are the subject of 16% of all police use of force incidents, a figure which rises to 20% of taser incidents, and 25% of all police firearms actions;<sup>12</sup>
  - c. account for 8% (13) of the 163 deaths in custody in the ten years immediately prior to 2018-19;<sup>13</sup> and
  - d. were 9.5 times more likely to be stopped and searched than White British people in 2018/19.<sup>14</sup>
19. It is our submission that while the above statistics continue to demonstrate such clear patterns of the disproportionate targeting of particular ethnic minorities, and in particular Black African and Caribbean communities in the UK, **the term institutionally racist remains a useful term with which to understand the structures and practices of the Metropolitan Police service in order that these same structures and practices (which are not unique to the Metropolitan Police Service), attract the attention and political will required to decisively address this issue.** It cannot be explained away as the wrongdoing of “*a few bad apples*”.
20. Therefore, we are profoundly concerned that the Commissioner believes that there is no longer any institutional racism in the Metropolitan Police Service (we are unaware of the views of other Chief Constables). Notwithstanding the progress that has been made since 1999, at best her comments suggest there has been a premature loss of focus on issues of racism and discrimination within the force; at worst her comments suggest complacency, ambivalence and/or hubris. Irrespective of which, her comments indicate a concerning erosion of political will in the upper echelons of the Metropolitan Police to continue its work in preventing and remedying injustices and delivering meaningfully on the implementation of the Macpherson report recommendations. As much of the evidence presented to this committee has demonstrated, decisively tackling institutional racism remains very much a work in progress even two decades on.
21. For ease of reference we address the key recommendations that impact on our work in the order in which they were made in the Macpherson report.

#### Recommendations 1 and 2: Ministerial Priority

22. While confidence in policing has fallen across all ethnic groups since 2017/18, it has fallen most sharply among Black Caribbean communities across the UK, reducing from 71% who say they had confidence in their local police to just 56% the following year.<sup>15</sup> Many of Macpherson’s recommendations sought to encourage police forces to take steps to address the lack of confidence and trust that many ethnic minority communities, and in particular Black British communities, had in them. The justified and widespread public outrage in the US and the UK over the murder of George Floyd, and the renewed concern about the accountability of policing in the UK, underlined by a number of widely-reported incidents over the months of Lockdown will do little to improve that. Therefore, it is clear that, much of the progress initiated by the Macpherson report’s recommendations is undermined further by falling public confidence in the police,

<sup>12</sup> Home Office, Police Use of Force statistics: 2018-19, p 10

<sup>13</sup> IOPC, ‘Deaths during or following police contact’

<sup>14</sup> Home Office Statistics

<sup>15</sup> Government statistics, Confidence in the local police, 4.03.2020

particularly within Black communities in the UK. This is only compounded by a loss of focus within the police itself, as illustrated by the Metropolitan Police Commissioner in her comments to this Committee.

23. In order to address this, **we call on the Secretary of State for the Home Department to consider the fresh implementation of recommendations 1 and 2 of the Macpherson report: so that a ministerial priority is re-established for all police services ‘to increase trust and confidence in policing amongst minority ethnic communities’, and a process of implementing, monitoring and assessing this ministerial priority against a number of robust performance indicators is established.**
24. Initiating such a ministerial priority in the immediate wake of Macpherson created the impetus for much overdue reform whilst simultaneously demonstrating at its clearest level the extent of the political will to deliver on this. The consequence was important and far-reaching, albeit unfinished, reform. Therefore, while the aforementioned recommendations remain only partially implemented some twenty years later, and with recent heightened public concerns regarding police tactics leading to yet further diminished confidence among many ethnic minority communities, we submit that the implementation of a fresh ministerial priority be brought forward in an effort to increase trust and confidence in policing amongst minority ethnic communities and to deliver meaningfully on these outstanding recommendations of the Macpherson report.

Recommendation 43: Inquest funding

25. Recommendation 43 asks for ‘*consideration [to] be given to the provision of Legal Aid to victims or the families of victims to cover legal representation at an Inquest in appropriate cases*’. This recommendation remains particularly significant given that people of Black, Asian and minority ethnicity die disproportionately as a result of use of force or restraint by the police, raising serious questions of institutional racism as a contributory factor in their deaths.<sup>16</sup>
26. The Ministry of Justice’s written submission to this inquiry simply sets out the current parameters for the provision of Legal Help, Legal Aid and Exceptional Case Funding for family members of the deceased at an inquest, and cites its report into legal aid for inquests, published in February 2019 as evidence of its consideration of these matters.<sup>17</sup>
27. Accessing lawyers with intricate knowledge of police-related deaths and inquest law at the earliest stage possible after a death plays a critical role in ensuring that bereaved families receive all the necessary information regarding the legal process, their rights and, crucially, the representation that is often required in order to preserve vital evidence. In State-related death cases, this requires equality of arms between bereaved family members and the state; allowing only the former to go without funded legal representation violates any basic notion of fairness.

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<sup>16</sup> <https://www.inquest.org.uk/bame-deaths-in-police-custody>

<sup>17</sup> Ministry of Justice, ‘Final Report: Review of legal aid for inquests’, February 2019

28. Therefore, **we submit that there must be automatic non-means tested legal aid funding for families to enable them to have specialist legal representation immediately following a State-related death.**
29. This is a proposal advocated by INQUEST, which has been supported by the IOPC, the Joint Committee on Human Rights, the previous and current Chief Coroner, the Independent Review of the response to the Hillsborough Stadium disaster, and the Report of the Independent Review of Deaths and Serious Incidents in Police Custody by the Rt. Hon. Dame Elish Angiolini DBE QC, published In January 2017.<sup>18</sup>
30. Many PALG members are also members of the Inquest Lawyers Group, which has campaigned consistently on this issue.
31. Following the Ministry of Justice review, it has said that it will be considering further options for the funding of legal support at inquests where the state has state-funded representation.<sup>19</sup> In so doing, the department can argue that it has satisfied Macpherson’s recommendation 43. However, **we submit that in order to properly deliver on this recommendation, such proposals should be brought forward without further delay in such a way as to ensure genuine equality of arms between bereaved families and the State in cases where the death is State-related.**

#### Recommendation 55: Police Complaints

32. Recommendation 55 called for: *‘changes to the police disciplinary and complaints system [as it was then] proposed by the Home Office be fully implemented and closely and publicly monitored as to their effectiveness’*. This led to the establishment, in 2004, of the Independent Police Complaints Commission (“IPCC”), following the passage of the Police Reform Act 2002. The IPCC took the place of what had been the Police Complaints Authority. In 2018, the IPCC was itself replaced by what is now the Independent Officer for Police Conduct (“IOPC”). We welcome the establishment of an independent watchdog and the further changes that the transition from the IPCC to the IOPC has brought.
33. However, while the current complaints system can yield positive outcomes for our clients in seeking enhanced accountability on the part of individual police officers and their conduct, the quality of investigations unfortunately remains inconsistent and the level of accountability obtained often remains inadequate. The police complaints system still regularly falls short of offering our clients redress and limits the scope for forces to learn valuable lessons.
34. PALG has previously submitted both oral and written evidence to HASC regarding our views of the inadequacies of the previous IPCC regime.<sup>20</sup> Unfortunately, these concerns remain with regards to the IOPC. To that extent, in respect of whether recommendation 55 has been meaningfully implemented, we would like to draw the Committee’s attention

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<sup>18</sup> INQUEST website, [timeline of support for legal aid for inquests](#)

<sup>19</sup> Ministry of Justice, ‘Final Report: Review of legal aid for inquests’, February 2019

<sup>20</sup> PALG submissions to the Home Affairs Select Community, ‘[Independent Police Complaints Commission](#)’, 2012-13, pp 53-58, pp153-161.

to our submissions regarding the previous complaints system, which regrettably largely remain of relevance.<sup>21</sup>

35. One specific area in which these shortcomings are especially evident, which is also of particular relevance to Recommendation 55, is the failure of the police complaints system to investigate complaints of a discriminatory nature in an adequate manner. We address this issue in more detail below, in the ***“Police complaints and race discrimination: a culture of denial, inadequate investigations and delay”*** section of these submissions.

Recommendations 7, 64-66: Ethnic Minority recruitment and retention to the police

36. Recommendations 7 and 64-66 of the Macpherson report relate to seeking to ensure that the 46 police forces of England and Wales reflect the *‘cultural and ethnic mix of the communities which those authorities serve’*.

37. There are no published statistics relating to the ethnic composition of English and Welsh police forces from 1999, hence recommendation 64 to *‘include targets for recruitment, progression and retention of minority ethnic staff’, and ‘for such reports to be submitted to the Home Secretary annually and published’*. The earliest date from which such statistics are available is 2007, at which point:

- a. 1.5% of officers were Asian;
- b. 1% were Black; and
- c. 1% were of a “mixed” racial/ethnic background.<sup>22</sup>

38. As of 2019:

- a. 2.9% of officers are Asian;
- b. 1.2% were Black; and
- c. 2.1% were of a “mixed” racial/ethnic background.<sup>23</sup>

39. These statistics need to be compared with data from the last national census in 2011 census, which showed the percentage of the UK population as a whole was:

- a. 7.5% Asian;
- b. 3.3% Black; and`
- c. 2.2% mixed racial/ethnic background.<sup>24</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> Government statistics, Police workforce, 4.10.19

<sup>23</sup> Ibid.

<sup>24</sup> Office for National Statistics, 2011 census: Ethnicity and National Identity in England and Wales,

Moreover, there is significant geographical variation with respect to these figures: in London, 40.2% of residents identified with either the Asian, Black, Mixed or Other ethnic group.<sup>25</sup>

40. PALG welcomes the increased transparency in regards to the publication of race / ethnicity data since the publication of the Macpherson report.
41. To the extent that there has been some, albeit limited, progress in this regard, this has enabled the Home Office and the police authorities to claim to have satisfied Macpherson's seventh recommendation 'to seek' to ensure that the police better reflect the cultural and ethnic mix of the UK. However, insofar as the composition of the police does not reflect the size of the UK's ethnic minority communities, it is our submission that this important recommendation is far from having been satisfactorily and meaningfully implemented. Increasing the proportion of Black officers, for example, by 0.2% over a twenty-year period is clearly inadequate.
42. Further, as the National Black Police Association has submitted to this Committee, Black and minority ethnic officers are disproportionately concentrated in the lower ranks and of those who are Chief Officers just 2.6% are Black and minority ethnic.<sup>26</sup> There is evidently ongoing work for police forces to undertake to retain and promote Black officers, in order to ensure that forces properly reflect ethnic minority communities across their organisations as a whole and maximise Black and ethnic minority talent. Problems with retention suggest that a 'canteen culture' is still prevalent. The recent case of *R (on the application of Chief Constable of West Midlands Police) v Panel Chair, Police Misconduct Panel*, in which an officer was recorded engaging in racist conduct, provides powerful evidential force for that contention.<sup>27</sup>
43. Achieving demographic equality is not an end in itself, but is one of a number of essential pre-requisites for bringing about the change of culture within police forces that is necessary to instil greater trust and confidence in the police among Black and ethnic minority communities. A disproportionate number of our clients are derived from this relatively small section of the population, and it should not be surprising that the majority of our clients have limited trust and confidence in the police, given that it is police conduct towards them that leads them to seek legal redress. This is a trust deficit that is replicated across those communities that are disproportionately affected by police misconduct. Just 56% of Black Caribbean adults have confidence in their local police force, for example, compared to 75% of those who are White British.<sup>28</sup>
44. Therefore, while we welcome the steps taken since the publication of the Macpherson report to improve transparency and the reporting of the ethnic minority composition of the police (i.e. the implementation of recommendation 64), we submit that recommendation 65 – relating to the development of initiatives to increase the number of qualified recruits who identify as being from a minority ethnic community – should be re-

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<sup>25</sup> <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/national-and-regional-populations/regional-ethnic-diversity/latest>

<sup>26</sup> Written evidence submitted by the [National Black Police Association](#) to the Home Affairs Select Committee, p 2

<sup>27</sup> [2020] EWHC 1400 (Admin).

<sup>28</sup> [Government Statistics](#), 'Confidence in the local police', 4.03.2020

evaluated by the Home Office and police services across England and Wales. As long as police forces continue to fail to represent British society as a whole, and therefore as long as recommendation 7 remains to be satisfactorily and meaningfully addressed, more is needed. **PALG submits that all police forces should be required to make an express commitment to taking measures to implement recommendation 65. Further, there should be regular national reviews of police forces' compliance with this commitment.**

Recommendations 60-63: Stop and Search

45. The Macpherson report's recommendations on stop and search required police forces to undertake better recording of stop and search and for this to enable a better understanding of the disproportionate impact of it on some ethnic minority communities, but particularly Black African and Caribbean communities.
46. While there is now better reporting and transparency in regards to stop and search, the issues relating to its use are still of deep concern to many amongst our client group. Although the Macpherson report recommended that no changes be made to the police's stop and search powers (recommendation 60), the report does describe it as an '*area of complaint which was universal*', and concluded that '*the majority of police officers who testified before us accepted that an element of the inequality was the result of discrimination.*' Addressing this must, said Macpherson, '*be the focus of [police forces'] efforts for the future*'.<sup>29</sup>
47. Twenty years on, racial and regional disparities in police forces' use of stop and search continue to be persistent:
  - a. Stop and search rates for Black British people were 9.5 times higher than they were for White British people, in 2018/19.<sup>30</sup>
  - b. 22 stop and searches were carried out for every 1,000 people in London, a city home to 58.4% of the UK's Black population and just 10.1% of White Britons.<sup>31</sup> Stop and search rates for Black British people by the Metropolitan police are 2.6 times that for Black British people by other English and Welsh forces outside of London.<sup>32</sup>
  - c. No further action was taken following 68% of stop and searches of Black British people in 2016/17.
48. As StopWatch have concluded, while there is a clear link between race and deprivation regarding the numbers of Asian and White British people subject to stop and search (i.e. those from deprived backgrounds from those communities are far more likely to be subject to it), '*Black people's experience is not related to deprivation in the same way because they are subject to similarly heightened rates of stop and search in deprived areas, affluent areas, and everything in between*'.<sup>33</sup> The injustices of the application of

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<sup>29</sup> The [Macpherson Report](#) (1999), p 360

<sup>30</sup> [Home Office Statistics](#)

<sup>31</sup> [Government statistics](#), 2011 census

<sup>32</sup> [Government statistics](#) on Stop and Search

<sup>33</sup> [Ibid.](#)

stop and search powers articulated by Macpherson are therefore clearly yet to be resolved.

49. Recommendation 63 sought to impose a duty on police authorities to undertake publicity campaigns to ensure the public is aware of stop and search provisions and the right to receive a record of a search. Pilots were undertaken immediately after the Macpherson report, but it is unclear whether a legal duty was imposed.<sup>34</sup> In any event, the effectiveness of the publicity campaigns has been questionable: the vast majority of respondents (89%) to a 2013 HMIC survey had no knowledge of stop and search information relating to their local area'.<sup>35</sup>
50. It is PALG's strong view that many of our clients and the communities from which they come continue to have such low levels of trust and confidence in their local police force in large part because of their use of stop and search powers. **While it may be argued that recommendations 60-63 have been implemented, they clearly require fresh focus and attention in order to deliver on the overarching objectives set by the Macpherson report in this area.**

#### RACE AND POLICING IN STATISTICS

51. We are aware that the Committee has received evidence of the statistical breakdown of the impact of Covid policing from, among others, Mirren Gidda of *Liberty Investigates*. Suffice it to say that we share in the widespread concern about the disproportionate use of enforcement measures, stop and search and use of force that has been exhibited during Lockdown.
52. These findings were not surprising to us in and of themselves, even if, at least in the earlier days, we might have hoped that we might all truly face Covid on equal terms. However, the wider context in which those figures are made real cannot be overstated. Accordingly, we set some of these out further in this section.
53. In the 2011 Census, Black and other minority ethnic people accounted for around 14% of the population<sup>36</sup> (Asian 7.5%, Black 3.3%, Mixed 2.2%,; and those from a different ethnic background ("Other") 1%), despite this, they are disproportionately represented in all of the following statistics:

#### Stop and search

- In 2018/2019 Black people were more than 9.7 times more likely to be stopped and searched than white people.<sup>37</sup>
- Between March 2018 and March 2019, there was a 34% increase in the number of stop and searches performed on Black people.<sup>38</sup>

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<sup>34</sup> Home Office, 'Upping the PACE? An evaluation of the recommendations of the Stephen Lawrence Inquiry on stops and searches (2000)', p 37

<sup>35</sup> HMIC, 'Stop and Search Powers: Are the police using them effectively and fairly?' p 35

<sup>36</sup> Office for National Statistics, 2011 Census

<sup>37</sup> Police powers and procedures, England and Wales year ending 31 March 2019

<sup>38</sup> Ibid.

### Use of force

- 26% of all use of force by police officers between 2018/2019 was on Black and minority ethnic people.<sup>39</sup>
- Between 2017 and 2019, when spit hoods were used by the Met Police, Black people accounted for 28% of those hooded.<sup>40</sup>
- In May 2020, 34% of incidents of recorded use of force by the Met Police were against Black Males.<sup>41</sup>

### Arrests

- In relation to Covid-related arrests:
  - Black people and other people from minority ethnic communities.<sup>42</sup>
  - Black people make up 12% of the population of London but received 26% of the 973 fines handed out by police and accounted for 31% of arrests.<sup>43</sup>
- In 2018/2019:
  - Black people were over 3 times as likely to be arrested as white people.<sup>44</sup>
  - Black people and other people from minority ethnic communities were over 1 and a half times as likely to be arrested as white people.<sup>45</sup>

### Imprisonment

- Between 2016 and 2018, 46% of Black defendants were remanded in custody for indictable offences at Crown Court, compared with 38% of white defendants.<sup>46</sup>
- At 64%, the highest rates of imprisonment were for Black defendants. The lowest rate of imprisonment was for white defendants, at 53%. 3% of those observed in the relevant study were Black. 78% were white.<sup>47</sup>
- In the year ending March 2019:
  - 27.8% of people in youth custody were Black.<sup>48</sup>

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<sup>39</sup> Police use of force statistics, [England and Wales year ending 31 March 2019](#)

<sup>40</sup> Metropolitan Police Service, [FOI request April 2019](#)

<sup>41</sup> Metropolitan Police Service, [Use of Force dashboard](#)

<sup>42</sup> Metropolitan Police Service, [Fixed Penalty Notices and Covid-19 Enforcement Report](#), 28.05.2020

<sup>43</sup> Ibid.

<sup>44</sup> Home Office, [Police powers and procedures](#), England and Wales year ending 31 March 2019

<sup>45</sup> Ibid.

<sup>46</sup> Ministry of Justice, [Statistics on Race and the Criminal Justice System](#), 2018

<sup>47</sup> Ministry of Justice, Hopkins, K., et al. [Associations between ethnic background and being sentenced to prison in the Crown Court in England and Wales in 2015, 2016](#)

<sup>48</sup> Youth Justice Board & Ministry of Justice, [Youth Justice Statistics 2018/19](#), England and Wales, 30.01.2020

- 27% of the prison population were from a minority ethnic group.<sup>49</sup>
- The average custodial sentence length for indictable offences has been lower for white offenders than all other ethnic groups since 2014.<sup>50</sup>

### Deaths in custody

- People of Black, Asian and minority ethnicity die disproportionately as a result of use of force or restraint by the police.<sup>51</sup>

### Use of restraints

- In 2018-2019, of the 401,000 occasions that restraint tactics were used, 16% of those restrained were Black or Black British.<sup>52</sup>
- Between 2010 to 2019, the proportion of deaths of people of colour in custody where restraint is a feature is over two times greater than it is in other deaths in custody.<sup>53</sup>
- Between 2004/05 to 2014/15, 10% of deaths in police custody were by restraint and the proportion of restraint deaths were similar across White and minority ethnic backgrounds, 10% and 11% respectively. However, it should be noted that the number of deaths with restraints detailed as a cause of death in the post-mortem will be lower than the number of deaths where restraints were used at some point during the detention.<sup>54</sup>

## **FOUR DEATHS OF BLACK MEN DURING POLICE RESTRAINT JUNE/JULY 2017**

54. On 3 September 2017, the Observer published an article about four Black men who died following contact with the police between June and July 2017. Its headline was: '*Four Black men die. Did police actions play a part?*'<sup>55</sup>. The four men in question were Edson Da Costa, Rashan Charles, Darren Cumberbatch and Shane Bryant.

55. These four cases of Black lives cut short by the state illustrate the continuing concerns about the disproportionate number of Black men who die after contact with the police. Though the circumstances of each differ, common themes from PALG members' years of working in this field that feature in these cases also include:

- a. apparent escalation in the level of force used, often out of proportion to the danger of the initial situation that prompted police contact, and lack of awareness of de-escalation measures and tactics (a recurring issue raised in the conversations that have followed the killing of George Floyd);

<sup>49</sup> House of Commons Library, UK Prison Population Statistics, for the year ending March 2019, 03.07.2020

<sup>50</sup> Ministry of Justice, Statistics on Race and the Criminal Justice System: 2018, 28.11.2019

<sup>51</sup> <https://www.inquest.org.uk/bame-deaths-in-police-custody>

<sup>52</sup> Home Office, Police use of force statistics, England and Wales year ending 31 March 2019:

<sup>53</sup> According to INQUEST, as explained in data analysed by them [here](#)

<sup>54</sup> Home Office, Deaths in Police Custody: A Review of the International Evidence, October 2017

<sup>55</sup> The Guardian, Four Black Men Die *Four Black men die. Did police actions play a part*, 3.09.17

- b. a lack of openness and willingness to learn lessons on the part of the police forces and individual officers involved;
- c. defensive/aggressive conduct both of individual officers, force lawyers in the legal processes that follow the death (though *some* change in *some* forces in this regard has been noted);
- d. the difficulties experienced by families and their lawyers in ensuring that the possibility that race played a factor is appropriately investigated;
- e. the perpetuation of stereotypes of Black people *including bereaved families* as dangerous/threatening/connected to gangs in the legal processes that follow the death: an example is the increased likelihood of officers making applications for anonymity and protection via screens during the inquest, on grounds explicitly or implicitly relying upon those stereotypes;
- f. lack of confidence of families in the system meant to bring wrongdoing to light and ensure lessons are learned, a lack of confidence which is all too often shown to be well-placed by the reality of the process as it unfolds.

56. Looking at the four cases in more detail:

Edson De Costa

- 57. Edir (known as Edson) Frederico Da Costa was a 25-year-old Black man who died on 21 June 2017 following contact with the police. Edson was a passenger in a car which was stopped by the Metropolitan Police in East London on 15 June 2017. The car was stopped in part because a young Black woman driving an expensive car was not 'normal'.
- 58. During his interaction with the police, Edson placed a plastic package into his mouth and was restrained on the ground by four officers. He was held in the 'prone' position face down, handcuffed with his arms behind his back and was hit by two 'distraction blows' (one open-, one closed-handed). There were two applications of the 'mandibular angle' pressure point pain compliance technique and CS spray used at close proximity to Edson's face (despite police guidance suggesting that generally a one metre limit is appropriate). Edson lost consciousness and was taken to hospital. He never regained consciousness and died six days later.
- 59. The inquest into Edson's death concluded on 6 June 2019 and found that Edson's death was the result of 'misadventure', stating that Edson 'died from the consequences of cardiorespiratory arrest after his upper airway was obstructed by a plastic bag containing drugs he had placed in his mouth'. The inquest also exposed various errors in the police's handling of the incident. For example, paramedics arrived at the scene 11 minutes after they were initially called as a result of police operators providing the ambulance service with the wrong location.
- 60. The IOPC investigation concluded, on 30 October 2018, that the use of force in restraining him was proportionate and necessary, and the reason for the stop was justified, but one officer may have committed misconduct over his use of CS spray.

61. This was despite the fact that Edson was handcuffed and restrained whilst obviously struggling to breathe. The police dismissed signs that he was choking as violent behaviour and increased the force they applied. At some point during the encounter, police needed to switch their role as one of law enforcers to medical responders, but they failed to see past the criminality they had associated with Edson.
62. Tellingly, one officer admitted that he thought Edson was faking his need for urgent help. These are features of restraint-death cases that we can track back decades in our work. As we explain in more detail below, even where these cases result in highly critical narrative verdicts at inquests, they are not followed up with robust or effective criminal proceedings.
63. As regards the family's experience of justice following Edson's death:

a. **Lack of openness and transparency:**

The police were not open and transparent at all during the process. They requested anonymity and ciphers for their officers alleging that the officers were at risk of reprisals because there had been some BLM protests following Edson's death and vague unsubstantiated intelligence from an officer that he was linked to a gang. They all gave their evidence behind a curtain and only family members willing to give details of their name, address, date of birth and occupation, and to undergo a check against the Police National Computer were allowed to see them.

b. **Anonymity for officers:**

The police applied for anonymity on behalf of the officers as described above. Also, the police lawyers objected to a jury member because she worked in probation. The Senior Coroner left very little to the jury and the family felt she changed her rulings when pressurised by the police.

c. **Inequality of arms:**

The five officers were represented by leading and junior counsel and the Metropolitan Police Commissioner had her own separate leading and junior counsel. However, as is often the case in such circumstances, they were essentially working as a team, so for the family it was two against one, and the family had the finite resources available to them on legal aid and only as an exceptional grant of case funding ("ECF").

d. **Hostile environment for the family:**

A hostile environment was created at the inquest inside and out. There was a police van parked outside every day supposedly to protect the officers involved. The police lawyers were defensive and combative throughout. They focussed on drugs, gangs and violence – characterising Newham as the most dangerous place in the UK. This was a tactic used to divert attention away from the circumstances that resulted in Edson's death.

**e. The family's experience of justice:**

The family did not feel that justice was achieved and felt that the police legal teams behaved appallingly in attempting to smear the reputations of the deceased and witnesses. They felt that the attitude of the Coroner was biased, that nothing was left to the jury to decide and they were generally bewildered by the process.

Darren Cumberbatch

64. Darren Cumberbatch was a 32-year-old Black man who died in hospital in Warwickshire on 19 July 2017 following use of force by the police whilst in the midst of a mental health crisis nine days previously. On 10 July 2017, staff at McIntyre House bail hostel in Nuneaton contacted police to raise concerns about Darren's behaviour. Darren, who had a history of depression and anxiety, appeared agitated, paranoid and afraid.
65. To this day there is disputed evidence as to how or why the police engaged Darren, after he ended up contained in a toilet cubicle. However, over the following ten minutes Darren was struck with batons, Tasers were discharged three times, PAVA incapacitant spray was directed at him, and officers used multiple closed fist punches and stamped on him. All this took place inside a small toilet area. Darren was then arrested handcuffed and restrained on the ground in the prone position (chest down). There was additional force used upon Darren during the 5 minutes it took for him to be placed in the van including 1.5 minutes of prone restraint with pressure being put on Mr Cumberbatch to "get some control of his main muscle groups" in the corridor, a further 1 minute next to the door to the garden and a further 1.5 minutes at the door.
66. Additional force was used at the entrance to the van as he was then transported to hospital. In the car park of George Elliot Hospital, he was taken out of the police van and restrained yet again on the ground by four officers. He was seen to be unresponsive and told to breathe. Whilst handcuffed, further restraints were applied to his thighs and ankles which were maintained for 40-45 minutes. This was far in excess of the 20-minute guideline. As he entered the hospital Darren was hyperventilating, sweating and both his heart rate and temperature were exceptionally high.
67. Even whilst in the hospital Darren was intermittently restrained, including a sustained period of nine minutes of restraint and an additional six minutes of restraint after that. He appeared distressed, asked for help and referred to the handcuffs being too tight. Darren died at the hospital following multiple organ failure, his body covered in bruises and marks. The inquest into Darren's death concluded on 25 June 2019 and found that the police's restraint of Darren contributed to his death. The family had serious concerns about the conduct both of the IOPC investigation and of the conduct of the inquest. The IOPC has yet to release the report of its investigation. A post-inquest review is being conducted but is still not complete.
68. As regards the family's experience of justice following Darren's death:
  - a. Darren survived for a week in hospital before he died. The police did not report the incident to the IOPC until after he died. Evidence was lost.

- b. The family had a negative experience of the IOPC, with what felt like a lacklustre investigation, disrespect for Darren's sister, and an unsatisfactory inquest process as regards the conduct of the inquiry by the coroner, though the jury made critical findings despite this, as set out above.
- c. A further indication of the disrespect with which bereaved families in these cases are treated is the lack of progress by the IOPC on its post-inquest review, because it has been unable to obtain copies of the recordings of the evidence at the inquest (which concluded more than a year ago as indicated above).

### Rashan Charles

69. Rashan Charles was just 20 years old when he died following restraint by Metropolitan Police officers in Hackney, East London, in the early hours of Saturday 22 July 2017. An officer thought Rashan's vehicle had been 'acting strangely' and followed Rashan into a newsagent's. He immediately restrained Rashan and there was a struggle, resulting in Rashan being taken to the floor. At this point a civilian bystander involved themselves in the restraint and assisted the officer in handcuffing Rashan. Rashan was turned on his side whilst the officer instructed him to spit out what he had in his mouth. At this point it is believed that purposeful movement from Rashan had already ceased and he had stopped breathing.
70. The inquest concluded on 20 June 2018 and found that none of the actions taken by the police contributed to Rashan's death. The directions from the Coroner to the jury led to them finding Rashan's death to be accidental. However, it was found that the restraining officer did not follow the prescribed police protocol for when someone is not breathing and suspected of swallowing drugs, and that the impact of the bystander who assisted in the restraint was not managed by the police officer. The Coroner also made a report to prevent future deaths under her Regulation 28 power. It included the need for officers to be trained to take into account the possibility that what appears to be the struggle to resist arrest is in fact the struggle to breathe. As stated above, this was a feature of Edson Da Costa's case as well. It is a common problem in the experience of PALG members in restraint deaths.
71. The IOPC decided that the police officer's conduct did not amount to misconduct and instead was better categorised as 'unsatisfactory performance'. They concluded that these 'performance deficiencies' could be addressed at a meeting between the officer and senior management. They deemed there to be nothing racially motivated in the way Rashan was dealt with. The IOPC did find that the police officer did not follow the correct first aid procedures when it was clear that Rashan was choking, but that these failings were not deliberate and the officer 'did his best in difficult circumstances'.
72. As regards the family's experience of justice following Rashan's death:

#### **a. The IOPC investigation**

The IOPC investigation was shambolic, disorganised and resulted in logistical difficulties in preparing for the inquest. This was coupled with a Coroner who was determined to go ahead with the inquest at a time when the IOPC investigation was ongoing and the CPS had yet to decide on criminal prosecution. This resulted

in the IOPC report and CPS decision being received only shortly before the inquest commenced. Although the question of whether Rashan's ethnicity played a part in the risk assessment of the officer's involved was part of the terms of reference, it was not a focal point of the investigation.

**b. Conduct of the police during the inquest process**

The Metropolitan Police Commissioner sought to include evidentially previous allegations the prejudicial effect of which on the jury clearly outweighed their evidential value. The family were ambushed with applications made without notice and at the start of the day. It was also insinuated on the Commissioner's behalf that a knife found near the scene could have belonged to Rashan, though there was no evidence, forensic or otherwise, to link him to the knife.

**c. Inequality of arms**

The Commissioner and individual officers were represented by experienced junior and leading counsel. Legal aid inefficiencies and delays meant Rashan was represented by a junior counsel alone.

**d. The family's views on justice**

Rashan's family were extremely disappointed, dissatisfied and upset with the outcome of the inquest and did not feel justice for Rashan was achieved. However, some were not surprised given the history of the difficulty in holding the police to account for deaths following police restraint.

Shane Bryant

73. Shane Bryant was 29 years old when his life support machine was switched off, on 15 July 2017. Two days earlier, he had been restrained face-down in the prone position for nearly 17 minutes by an off-duty police officer and members of the public after attempting to rob a Co-op, in which he was initially (though not at the time of the restraint) armed with a baseball bat.

74. The IOPC conducted an independent investigation but the report has not yet been made public. Comments at this stage are therefore limited, for the purposes of these submissions, to the concern that race was not adequately considered. The inquest has been listed to take place in the spring of 2021 and it would not be appropriate to comment further until these proceedings have concluded, save to say that whilst the family acknowledges and in no way condones Shane's criminal conduct, they are concerned that force known to be potentially fatal was used not as a proportionate response because Shane posed a risk to life, but for the purposes of arresting him. They are also concerned that Shane may have been struggling to breathe, not to resist arrest, as with other cases race may have played a part, consciously or otherwise, in the failure to manage the situation in a way that minimised rather than increased the risk of a fatal outcome.

## POLICE COMPLAINTS AND RACE DISCRIMINATION: A CULTURE OF DENIAL, INADEQUATE INVESTIGATIONS AND PROTRACTED DELAYS

75. One of the key functions of a police complaints process is to restore some semblance of trust in the police for victims of misconduct by ensuring an effective investigation capable of holding officers to account. Given the understandable lack of trust many Black and minority ethnic communities have in the police, it is particularly important that complaints lead to effective redress in cases of race discrimination.
76. However, in PALG's experience, allegations of race discrimination are routinely not properly addressed by police complaints bodies, whether internal to the force in question or through the Independent Office for Police Conduct (IOPC). Such complaints are often dismissed without any effective examination of the evidence.
77. We believe that there are cultural and structural problems which impact adversely on how police complaints are investigated by the IOPC and individual police forces. We also believe that these issues are compounded in cases involving allegations of race discrimination. In this section we develop these themes, provide several case studies which illustrate them and make proposals for change.

### Police officers' accounts

78. While we recognise that significant efforts have been made to promote a culture of transparency and openness within the police service, we find that ensuring police officers act with candour, and explain their actions openly and fulsomely, is a continuing challenge. Too often, PALG members and our clients are met with a culture of denial and obfuscation when officers are challenged about their behaviour through the complaints process. Too readily there is still a "closing of ranks" behind the "thin blue line". We also see this in civil actions for damages and inquests into deaths arising out of police conduct. As we set out in the next section, this also has the effect of undermining the possibility of an effective criminal investigation and prosecution.
79. The Report of the Independent Review of Deaths and Serious Incidents in Police Custody by the Rt. Hon. Dame Elish Angiolini DBE QC, published in January 2017, observed that "*the default position whenever there is a death or serious incident involving the police, tends to be one of defensiveness on the part of state bodies*".<sup>56</sup>
80. Dame Angiolini included a recommendation that "*As with civilian witnesses, all statements should be the honestly held recollection of the individual officer*".<sup>57</sup> One of PALG's very experienced members, Jane Deighton, rightly pointed out to this committee, on 18 June 2019, that the fact that Dame Angiolini felt it necessary to make such a recommendation was "*quite shocking*". Ms Deighton continued that it was "*a measure of*

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<sup>56</sup> Angiolini, Report of the Independent Review of Deaths and Serious Incidents in Police Custody, January 2017, para 17.2, page 225

<sup>57</sup> Angiolini, Report of the Independent Review of Deaths and Serious Incidents in Police Custody, January 2017, recommendation 64, page 242

*how far we haven't come that it has to be a recommendation in a public report that police officers should be honest".<sup>58</sup>*

81. Lack of candour by police officers led the Hillsborough families and their lawyers to promote the Public Authority (Accountability) Bill, also known as the "Hillsborough Law". This was introduced into parliament by Andy Burnham MP in March 2017.<sup>59</sup> The Bill was intended to bring about a wholesale shift in attitude, and its main purposes were: (i) to set a requirement on public institutions, public servants and officials to act in the public interest and with candour and frankness; (ii) to define the public law duty on them to assist courts, official inquiries and investigations; (iii) to enable victims to enforce such duties; (iv) to create offences for the breach of certain duties; and (v) to provide funding for victims and their relatives in certain proceedings before the courts and at official inquiries and investigations. This Bill was a logical attempt to build on the statutory duty of candour which is already in place in the healthcare setting. Disappointingly, the Bill fell victim to the snap general election called by Theresa May in May 2017.
82. We note that when she gave evidence to this inquiry on 5 February 2019, Baroness Lawrence of Clarendon OBE was asked whether she now feels that there is "*genuine candour from the police, that there is a real and honest commitment to giving you the full details, if there are further things to be found?*". Her answer was "No". She cited her view that the police are "*doing all they can not to give the true facts of what happened*" to the undercover policing inquiry.<sup>60</sup>
83. In our experience this cultural defensiveness is compounded in race discrimination cases. Equalities case law has long recognised that direct evidence of discrimination is often hard to find;<sup>61</sup> and this is partly because it can often be hard for individuals to admit that they have acted in a discriminatory way. It is a reflect of these difficulties that the Equality Act 2010 s.136 provides a "reverse burden of proof" in proceedings under the Act. As explained further below, this means that where a claimant can present sufficient evidence that they were unlawfully discriminated against, a civil court or tribunal must find that the claimant was discriminated against, unless the defendant can show, on the balance of probabilities, that no unlawful discrimination occurred. In the police context there seems a particular reluctance to accept that an officer has committed an act of race discrimination. When such issues are litigated, our experience is that police forces will rarely admit that there has been discrimination whereas they may be much more willing to admit that there has been a wrongful arrest or assault.
84. We note that new legislative changes to the Standards of Professional Behaviour were introduced in February 2020, so that under the duties and responsibilities heading, it states that "*Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness*".

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<sup>58</sup> Home Affairs Committee, Oral Evidence: The Macpherson Report: twenty years on, HC 1829, 18.06.19

<sup>59</sup> Public Authority (Accountability) Bill 2016-17

<sup>60</sup> Public Authority (Accountability) Bill 2016-17

<sup>61</sup> See, for example, *King v Great Britain China Centre* [1992] ICR 516

85. It continues to be striking that an explicit statement of this sort was called for. Nevertheless, we welcome this obligation being placed on a formal statutory basis. **Monitoring whether all individual forces include this principle in their own local guidance and take steps to ensure that it is properly understood and embedded, will be necessary to see if it results in the ‘sea change’ in police culture which is needed.**

#### Internal police complaints investigations

86. In our view, this fundamental issue about candour permeates the entire police complaints process. It sits behind an unwillingness of officers to speak openly about their actions, and the actions of their colleagues, and provides a context for the routinely dilatory and poor investigations we see conducted by police misconduct departments when they are investigating complaints. This makes it particularly hard for there to be proper accountability in cases involving race discrimination allegations.

87. In order to ensure the police complaints system functions effectively and efficiently, the IOPC has adopted guidance to the police service regarding the handling of complaints issued by the IPCC.<sup>62</sup>

88. The guidance provides assistance on a range of issues, including on how to assess evidence of discrimination. The guidance explains at paragraphs 6.8-6.10 that in many cases, it is necessary to examine circumstantial evidence and look at all the circumstances of the case in order to see if discrimination can rightly be *inferred* from the surrounding facts, so as to find a case to answer for discrimination or to uphold an allegation of discrimination. The guidance also indicates that the evidence supporting the allegation of discrimination should be weighed against any alternative, non-discriminatory explanation provided by the officer or otherwise suggested and supported by the evidence; and that the relative credibility and plausibility of competing accounts and explanations should also be assessed in light of all the evidence available.

89. However, there are real concerns about how this guidance operates in practice. We note the evidence of the IOPC to this inquiry, that in 2017, it found that a majority of investigations involving allegations of discrimination carried out by Greater Manchester Police, West Yorkshire Police, and West Midlands Police did not go far enough to address the allegations of discrimination contained within them.<sup>63</sup>

90. Moreover, although the intention of the guidance appears to be to ensure that it reflects the legal framework that would apply if an allegation of race discrimination was litigated in the County Court, this is not explicit. As indicated above, in the civil courts, the claimant would be able to rely on the statutory shift in the burden of proof set out in the Equality Act 2010, s.136.<sup>64</sup> This means that once the claimant had “...*proved facts from which conclusions could be drawn that the respondent ha[d] treated the claimant less*

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<sup>62</sup> IPCC Guidelines for Handling Allegations of Discrimination

<sup>63</sup> IOPC, *Written submissions to the inquiry*, p.21.

<sup>64</sup> This provides: “(2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. (3) But subsection (2) does not apply if A shows that A did not contravene the provision*”.

*favourably on the ground of [race]*”, the burden of proof would shift to the police force; and in order to discharge that burden, the force would need to prove “*on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of [race]*”.<sup>65</sup>

91. The shifting of the burden of proof is rooted in long-standing principles which recognise that often direct evidence of discrimination is hard to find; and that discrimination is sometimes only properly found by giving the account provided by the alleged discriminator particularly careful scrutiny. These principles apply in all contexts, including that of policing.
92. **Incorporating a shifting burden of proof into the IPCC/IOPC guidance more explicitly would ensure that the guidance was legally consistent and on a par with the approach used in the civil courts. It would remove the risk that the same set of facts could lead to the dismissal of a police complaint but the upholding of a civil claim. It would also give greater incentive to officers and forces to provide fulsome explanations for their conduct. It would mean that, rightly, adverse inferences would be more likely to be drawn against officers from their lack of co-operation with a complaint investigation.** Case study five below is an example of the type of case where this might have made a difference.
93. Finally, there is a separate, but related, issue of the continued over-representation of officers from Black and other minority ethnic backgrounds in internal misconduct allegations within the police (as opposed to public complaints). This inquiry has already received evidence from 2018 that officers from Black and other minority ethnic backgrounds are twice as likely to face misconduct allegations, 4.6% compared to 2.1% for white officers.<sup>66</sup> This understandably generates concern that police forces’ internal misconduct procedures are not conducted in an even-handed way, to the detriment of officers from Black or other minority ethnic backgrounds. The impact this has on the morale and retention of officers who are Black or from other minority ethnic backgrounds has been powerfully addressed in other submissions to the inquiry. However it is also likely to lead to a member of the public making a complaint of race discrimination having yet further reduced confidence that their complaint will be handled fairly (although we appreciate that misconduct matters and ‘public’ complaints are subject to different processes).

### The IOPC

94. These concerns about candour and defensiveness by the police inevitably impact on the work of the IOPC.
95. The public ask the IOPC to do an immensely difficult job holding the police to account for serious misconduct and criminality. The IOPC are asked to investigate and interview officers who will fight tooth and nail and do whatever it takes to save their jobs and those of their colleagues. They are asked to find that these officers have used unlawful force,

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<sup>65</sup> See *Igen v Wong* [2005] EWCA Civ 142; [2005] IRLR 258

<sup>66</sup> Home Affairs Committee, Oral Evidence: The Macpherson Report: twenty years on, HC 1829, 10.07.19

have been guilty of racist discrimination, and that the colleagues supporting them are lying to cover up such behaviour. They face the constant threat of legal action from officers' well-funded lawyers and the prospect of very public criticism - driven by the highly effective public relations machine at the Police Federation - if they make the wrong decision (and often even if they make the right decision).

96. We do not underestimate the challenges faced by the IOPC. And we do not underestimate the resolve required to face those challenges – we see it every day in our clients. Faced with police officers and police forces who are willing to use any means necessary to avoid proper scrutiny and accountability, our clients show the most incredible determination, tenacity, and courage to demand justice. All too often, when investigations fail it is because those qualities appear to be entirely absent in those appointed to investigate. Too often our clients are met with investigators who seem to lack the willingness to mount the full and fearless inquiry necessary to bring to light police misconduct in the face of state efforts to keep it hidden; these investigators appear to think that a fierce determination to undercover misconduct is somehow at odds with their independence when in fact they are one in the same.

97. Our clients find what it takes to demand accountability because they simply have no choice. We as their lawyers take strength from our client's determination and are supported by dedicated colleagues. The question then is from where can individual investigators and others at the IOPC find what it takes to do the difficult job society demands of them. This must come from the IOPC leadership instilling a culture where IOPC staff can be proud to fearlessly hold the police to account on behalf of all of us. Sadly this is generally lacking, as is illustrated by two examples below where we see the latter approach far more frequently than the former:

- a. Following the 2015 fatal shooting of **Jermaine Baker**, the IOPC took the bold but entirely necessary step of opening a homicide investigation and arresting on suspicion of murder the officer who fired the fatal shot. This was met with a huge backlash from the police firearms community and the wider policing community, and was publicly questioned by the then Commissioner Bernard Hogan-Howe. Commissioner Hogan-Howe continued his criticism of that decision until his retirement from the role in 2017 when he openly attacked the ongoing investigation and demanded 'more public trust' in (i.e. less scrutiny of) armed police.<sup>67</sup> In response, the then Commissioner of the IPCC, Dame Anne Owers, mounted a robust response highlighting the 'myths and selective facts' relied upon by Hogan-Howe and pointing out powerfully that '*Rigorous independent scrutiny is not a threat; it is a protection...and...If the police appear to shy away from this, there is a real risk to public trust.*'<sup>68</sup>
- b. That can be contrasted with the IOPC response more recently to public criticism in the case of **PC Edwin Sutton** who in 2017 used a police car to knock a young moped rider off his bike leaving him with potentially life-changing injuries. The

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<sup>67</sup> Policing Insight, Sir Bernard Hogan Howe's speech to RUSI: Policing the Metropolis and how policing in the future can change, 14.02.17.

<sup>68</sup> IOPC, IPCC Chair Dame Anne Owers' article in The Times concerning fatal police shooting investigations, 16.02.17.

IOPC found that PC Sutton had a case to answer for gross misconduct but the Metropolitan Police Service refused to take any action against him. The IOPC formally recommended that such action be taken, but again the MPS refused. The IOPC then exercised its powers to direct the MPS to discipline the officer – again, a bold but entirely necessary and appropriate step. In the event, the MPS misconduct panel cleared the officer. There then ensued a full-frontal attack on the IOPC in the national press driven by the Police Federation. The national press published extensive comments from the Metropolitan Police Federation Chairman criticising the IOPC and the scrutiny faced by the officer. It was claimed that without greater protection from such scrutiny it would ‘get to the point where we are not going out and protecting the public anymore’, and accusing the IOPC of a ‘witch hunt’. These were entirely baseless allegations that completely mischaracterised the case, and yet the IOPC were almost completely silent and said nothing to address the false narrative created.<sup>69</sup>

98. These cases demonstrate that to talk of instilling ‘culture’ in an organisation like the IOPC is not vague management speak, but something achievable by tangible actions from its leadership. To do so the leadership must be clear on the purpose and values of the organisation, proud of its role in society, and willing to say so publicly in the clearest terms. One can easily imagine the very different impact the public response in the respective cases would have had upon the individual investigators who took these difficult but necessary decisions in the pursuit of accountability; but more importantly one can also imagine the impact on all those within the organisation who are being asked to make such decisions on a daily basis.
99. Unfortunately, Anne Owers proudly championing “*Rigorous independent scrutiny*” of the police is a rare example of such a statement. Far more common is the weak and defensive IOPC that showed itself in its passive silence in the second case. Against that background, with such messaging coming from the top of the organisation, the examples set out in the case studies provided to the HASC by PALG are really no surprise. Those at the frontline of the organisation will, however well-intentioned, take their lead from those at the top and that is where the responsibility for these failures must lie.
100. None of this is to say that IOPC press statements are all that matter; on the contrary, the messages the IOPC communicates to its staff are at least as important. These examples do however offer an insight into how the organisation views itself and the effect that has on how it serves society.
101. We note that the Angiolini review also identified evidence that the Independent Police Complaints Commission (now the IOPC) did not routinely address race and racism in their investigations. **The review recommended training for police to understand institutional racism and the experience of ethnic minority communities, central monitoring of the correlation between ethnicity and race-related deaths, and**

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<sup>69</sup> Daily Mail, [Police driver, 49, who faced sack for knocking 'moped mugger' off bike is cleared of misconduct as his treatment by force watchdog is labelled an 'absolute travesty'](#), 08.05.19 and Daily Mail, ['He was thrown to the wolves': The dedicated Met police officer who faced TWO YEARS of hell during warped investigation of his brave decision to take down a moped mugger fleeing with a handbag, 10.05.19](#)

**consideration of race and racism as an integral part of IPCC (now IOPC) investigations.<sup>70</sup>**

102. Finally, neither the submissions above nor the case studies provided should be taken as implying that the IOPC can never do its job. Our clients require some form of independent investigatory body, whatever it is called. There are some exceptional individuals who are well able to provide society with the rigorous independent scrutiny of which Anne Owers spoke. What the IOPC must do now is create an organisation where such individuals are not the exception.

Sanction

103. Another key concern is that, on the relatively rare occasions when an officer is found guilty of race discrimination by a Police Misconduct Panel, sanctions are too lenient, despite Recommendation 57 of the Macpherson Report to the effect that *“it should be understood that such conduct should usually merit dismissal”*.

104. We note that Nick Glynn, the senior programme officer of Open Society Foundations, has given evidence to the inquiry that *“Not long before I retired, I received a racial slur from a very senior peer of mine. What happened to that officer? There was a misconduct hearing and they were given a slap on the wrist, because that is exactly what it was, and allowed to retire on an ill health pension. In effect, nothing happened to them. We are talking fairly recently. These things are happening on a daily basis and we kid ourselves if we think that, since the Stephen Lawrence recommendations, we have made massive progress. There is still massive progress to be made”*.<sup>71</sup>

105. This experience of leniency reflects that of PALG members.

106. It is therefore to be welcomed that on two occasions recently, Chief Constables have sought judicial review of sanctions imposed by Police Misconduct Panels for acts of race discrimination as being too lenient: *R. (Chief Constable of Northumbria) v Police Appeals Tribunal*<sup>72</sup> and *R. (Chief Constable of the West Midlands) v Panel Chair (Police Misconduct Panel)*<sup>73</sup> These cases evidence some recognition by Chief Constables of the damage that racist conduct, and the perception of lenient treatment for the same, does to public confidence in the police albeit we have yet to see more than these two examples thus far.

107. Eady J’s judgment in the second case illustrated a range of ways in which the Police Misconduct Panel had erred in its approach to determining the appropriate sanction. The Panel had assessed that the racist conduct had been *“provoked”*, a finding which the judge described as *“sufficiently inexplicable as to be properly described as irrational”*. The Panel had also unduly focussed on the personal mitigation of the officer, at the expense of considering the impact on the BAME officers who had overheard the racist comments. Eady J’s judgment shows that the courts should carefully scrutinise the effects of racist language and behaviour by police officers. **The judgment should be**

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<sup>70</sup> Recommendation 98, page 245

<sup>71</sup> <https://committees.parliament.uk/oralevidence/524/default/>

<sup>72</sup> [2019] 12 WLUK 78

<sup>73</sup> [2020] EWHC 1400 (Admin)

**publicised and used as the basis for training for all those investigating police complaints of race discrimination.**

### Case studies

108. In preparation for this submission, PALG requested case studies from members, both good and bad, as to how forces, the IPCC and IOPC have handled complaints of race discrimination in recent years. Regrettably, we have yet to receive a single case study from a PALG member where a complaint of race discrimination was upheld and officers subject to sanction. This is sometimes the case even where other aspects of a complaint have been upheld and at the very least a finding made that there is a 'case to answer' for misconduct on matters other than race discrimination.
109. We have compiled a small sample of seven anonymised case studies received from our members where despite evidence of race discrimination being readily apparent no such allegation was upheld. Poor decision-making in this area is pervasive. On two occasions (see 'AZ and BH' and 'CC') the complaints body made unlawful findings of fact in relation to the incident. On one occasion (see 'Dijon and Liam Joseph'), the officers refused to cooperate with the investigation. They provided no non-discriminatory justification for their actions, but the complaints were not upheld with no adverse inferences drawn as a result of their lack of co-operation.
110. Many complainants still face protracted delays and drawn out litigation with complaints bodies, battling for their allegations to be properly investigated. Six of the seven cases took more than six months to resolve; five more than one year. Three of the individuals waited longer than a year for a first instance decision that was then appealed. In one case ('CC'), the IOPC took 27 months to conclude its investigation before only upholding the complaint in part. Two of the complaints ('SP' and 'AZ and BH') are still ongoing, 18 months and 26 months respectively after the incidents occurred and complaints were made.
111. If Chief Constables and the IOPC are serious about tackling racism in policing then there must be effective investigations into such complaints, which are capable of and focussed on identifying offenders and holding them to account. Investigations should also be completed without undue delay. PALG's case summaries set out below show that for the time-being these objectives are still only aspirations. The case studies illustrate the uphill struggle faced by Black and minority ethnic victims of race discrimination when dealing with the police complaints process.

### Case Study 1: SP

112. SP, an 18-year-old Black male, made a complaint after he was stopped and searched under s.1 PACE by officers from South East Territorial Support Group in December 2018. He had been walking home from college with two friends. SP was the focus of the police's attention, and during the search the police discharged a Taser against him without warning and for no good reason. The intelligence that the police officers relied on when conducting the search regarded three Black males on bikes. However, SP was the only one of his three friends who was Black – the other two were of different ethnicities – and none of them were on bikes.

113. SP complained to the Metropolitan Police Service (MPS) that he had been subjected to race discrimination. However, the MPS did not uphold his complaint and found that there was no case for the officers to answer. In an appeal against the MPS' decision, the IOPC identified a number of failings in the MPS' investigation of the complaint. The IOPC found that the MPS had failed to properly record that SP had made an allegation of race discrimination and had been ineffective in its investigation of the complaint. The IOPC directed the MPS to reinvestigate, and the investigation remains ongoing now, 18 months later.
114. There has been no civil claim yet but a standstill has been agreed to allow SP to bring a claim following the outcome of the complaint. SP's case is a particularly blatant example of failures in complaints investigations at the first instance.

#### Case Study 2: AZ and BH

115. Another example of poor complaint decision-making can be found in the cases of AZ and BH, an uncle and nephew who are both Asian. AZ and BH made a complaint after they were subject to a 'hard stop' by West Midlands Police officers one night in March 2018. During the stop the two were subjected to inordinate police aggression, were assaulted and restrained, and an officer discharged a firearm at the tyre of their stationary vehicle. They were then arrested and questioned individually in police vehicles, before being released without charge an hour later.
116. The two men complained straight away about the 'hard stop', their subsequent detention, and excessive use of force by West Midlands Police. They alleged that the incident was a result of racial profiling. None of AZ and BH's complaints were upheld by West Midlands Police in their July 2019 report on the investigation.
117. The report also made unlawful findings of fact against the two men, and failed to properly investigate the allegations. In reaching their conclusions, West Midlands Police failed to grapple with the allegation of race discrimination and did not review the intelligence relied on by West Midlands Police when carrying out the stop. The investigating officer also refused to disclose the intelligence to the complainants. In spite of this, the report asserted that the intelligence was credible and justified the 'hard stop'. The credibility of the intelligence was also relied on to dismiss any allegation of racial prejudice.
118. An appeal against the decision was submitted in November 2019. The appeal was successful, and West Midlands Police were directed to reinvestigate. The two men are still awaiting the outcome of this re-investigation, having already been subjected to considerable delay in resolution due to the initial failures.

#### Case Study 3: AI

119. AI, who is a young British-Asian male, made a complaint to the police after he was stopped and searched by officers when leaving his gym one evening in October 2016. Despite a lack of evidence to support any reasonable grounds to suspect him of an offence, he was detained under s.1 PACE for a weapons search, and then arrested by the police for the purposes of further enquiries. This was on account of spurious

allegations made by two white males with whom he had an argument at the gym earlier. AI was not asked for his version of events by the officers prior to his detention, nor informed of the grounds of his arrest, and was held in custody overnight for 14 hours before being released. One week later, a decision was taken to take no further action against him.

120. At the police station on his release, AI lodged a complaint about his treatment, stating that the officers' conduct was motivated by race discrimination. Unfortunately, the July 2017 report into the investigation did not uphold AI's complaint. An appeal against the decision was upheld by the then-IPCC in November 2017. The IPCC directed the case back to the police's Professional Standards Directorate for a reinvestigation, the results of which were released in July 2018 and again did not uphold AI's complaint of race discrimination. AI also faced considerable delay in finding any resolution from the complaints process.

121. AI took a civil claim which settled in his favour and in which he received an apology from the police, but still no admission of race discrimination.

#### Case Study 4: PM

122. PM, a Black man, made a complaint after he was subject to a search whilst visiting family with his son in March 2015. Their family lived in a neighbourhood of predominantly white residents. Police were looking for a Black man wearing different clothing and who was not with a child. PM was spotted by police and followed to the address of the family he was visiting. Armed officers surrounded the house and demanded that "the Black man should come outside".

123. PM complied fully but was nevertheless handcuffed for the purposes of a search for weapons. The officers did not comply with s.1 PACE and so the search was in any event unlawful. Despite no weapon being found and that the police had obviously stopped the wrong person, one officer told PM that they "knew it was him", but said that he must have disposed of the weapon they were looking for. Eventually the officers removed the handcuffs but refused to acknowledge any wrongdoing or error on their part.

124. PM immediately complained to the police in June 2015 but this was dismissed by a local resolution. This decision was only overturned on appeal to the IPCC, which directed that the complaint be reinvestigated. A second investigation upheld that the officers did not comply with s.1 PACE when conducting the search, but did not uphold that PM had suffered race discrimination. A further appeal was lodged, and dismissed in January 2016.

125. PM faced a lengthy delay in resolving his case. He eventually took a civil claim and received an apology for the police's failure to comply with s.1 PACE, but in the end received nothing in relation to the race discrimination he experienced, nor for the fact that the officers placed a disproportionate emphasis on the fact that PM and the suspect were Black and most locals in the neighbourhood were white. This was despite the fact that one officer reported that they "could see a Black male inside [the house] who fitted the description. The residents in this area are predominantly of Caucasian appearance". That he would not have been searched if he were not Black is clear from this; a white

comparator – matching the description in terms of clothing, for instance – would not have been searched at all.

126. PM subsequently took a civil claim which settled in his favour and led to an apology from the police. However, there was still no admission of race discrimination on their part.

#### Case Study 5: Dijon and Liam Joseph

127. Two brothers Dijon and Liam Joseph, both Londoners of African-Caribbean heritage, were stopped and searched for drugs in February 2018. The search took place in the early evening on Deptford High Street. An officer later said she had seen them exchange an item, in an area with a high rate of drugs related crime. The brothers had not exchanged anything, but had ‘fist-bumped’ each other some moments before.
128. One of the brothers, Dijon, was placed in handcuffs during the search, and was then arrested on suspicion of theft when the police officers found his girlfriend’s bank card in his pocket. He explained whose it was but the officers did not believe him, and only de-arrested him after a passer-by called Dijon’s girlfriend to confirm his account. Liam’s car was also searched without his knowledge.
129. Nothing was found on either brother that might have been ‘exchanged’ and no evidence was put forward as to why Deptford was considered to have a high rate of drug related crime, or indeed why the brothers were suspected of being involved in a drug deal. It was therefore not accepted that the officer who initiated the search could have had the requisite reasonable suspicion.
130. A complaint was made to the MPS in March 2018. In the absence of a non-discriminatory explanation, and against the backdrop of a huge racial inequality in stop and search statistics, the brothers were entitled, by reference to the Equality Act 2010, to infer that the stop was discriminatory on the basis of their race. As a result of the media attention which the incident attracted, a decision was taken by the IOPC to undertake an independent investigation. However, the investigation report was published by the IOPC in July 2019 and did not uphold the brothers’ complaint, finding that there was no overt evidence of discrimination.
131. During the investigation, the officers involved gave ‘no comment’ interviews, and advanced no non-discriminatory explanation for the stop. The IOPC guidance does not specifically provide for adverse inferences to be drawn in those circumstances. The brothers raised this with the IOPC as a structural failing of the complaints process, stating:

*“If the complaints process is not able to give effect to the Equality Act, complainants have no choice but to resort to civil proceedings for redress. As well as the usual barriers to justice however, they will then also find that police forces rely, as here, on the inevitable finding in the flawed complaints process that there is no evidence of discrimination, to deny their Equality Act rights. Most police forces, and indeed the Legal Aid Agency, insist that the complaints process be pursued before civil proceedings can be progressed.”*

*The effect is a powerful disincentive on victims of discriminatory policing to engage with the complaints process at all. As will be clear, that is inconsistent with the IOPC's statutory role, not least given the scale of the statistical inequality around the use of stop and search and how it affects minority communities."*

132. The IOPC responded in June 2020, acknowledging the structural concern raised and expressing a willingness to explore this. However they reiterated the legal parameters of their work, and the fact that some of the factual issues had not been agreed on.
133. The MPS have also denied liability in civil proceedings, relying on the IOPC finding.
134. The IOPC also made three learning recommendations to the MPS in their June 2020 report. One recommendation was that "the MPS examine the quality and quantity of stop and search training and unconscious bias training provided to officers by considering implementing live case studies including comparator examples to highlight the possible nature of how discrimination and unconscious bias can be perceived by the public." The Metropolitan Police Service responded stating that they are satisfied with the mechanisms they have in place already, that the mechanisms meet all points of concern, and that their current training covers the recommendation in full.
135. It is the view of Dijon and Liam that, if those mechanisms were working as the police claim, they would not have been subjected to this humiliating and distressing event, and nor would huge numbers of other Black Londoners, in numbers that dwarf stops of white people.
136. A second recommendation related to the officers' refusal to cooperate with the investigation, with all of the implications that carries for public confidence in policing. In response to this, the MPS confirmed that they have adopted legislative changes to the Standards of Professional Behaviour which now say that 'Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness'.
137. It would seem that firstly, the public were always entitled to assume that this was an expectation on police officers, and secondly that if the police really wanted to tackle discrimination in policing, they should have nothing to fear from allowing adverse inferences to be drawn in the complaints process. At most this might lead to a finding of a case to answer, and the matter can then pass to a properly convened disciplinary panel to resolve with the benefit of evidence and representation.
138. In this case, had the IOPC properly applied its guidance, it could have concluded that the absence of evidence from the officers was part of the evidential framework, that led to a conclusion that there was a case to answer. However, making the statutory shift in the burden of proof explicit in the police complaints guidance, as we discuss above, would have made a meaningful difference in this case. It would likely have meant that adverse inferences were drawn against the officers for their silence.

### Case study 6: JA

139. In April 2017, JA, a Black-British IT consultant, made a complaint alleging race discrimination after he was pulled over by police on his way home from a bar. The officers refused to tell him several times why they had stopped him, stating that they did not need a reason. JA was found to be over the legal limit to drive, and was dragged from the passenger door of the police car in a chokehold before being restrained by three officers in the middle of the road. The restraint caused ruptured ligaments and dislocation of his thumb, which later led to surgery. He was subjected to insulting language from the officers during the incident.
140. JA was then taken to the police station where he was breathalysed again, and was this time found to be under the legal limit. He was released, and the next day contacted the police to make a complaint, but was persuaded not to do so by attendant staff.
141. After realising the extent of the injuries he had suffered, JA made a formal complaint to the Metropolitan Police Service. The Serious Misconduct Unit found that the police had no case to answer and that the stop was lawful. This was despite accepting that JA had displayed no aggression towards the officers, and acknowledging that the officers had given him no reason for the stop. The investigating officer also failed to effectively question the officers regarding the insulting language JA had alleged was used against him.
142. JA appealed to the IOPC in June 2018. In the appeal, JA's solicitors made the case that the excessive force and insulting language used by the officers may have been rooted in assumptions about JA that were based on his race: for instance, that Black men are more likely to be ill-educated, aggressive and violent. This interpretation is supported by the references made by the officers to JA's physique as justification for their actions.
143. The allegations of race discrimination were further bolstered by the fact that, although one officer did state that he saw JA's car leaving a bar (one known for its largely African-Caribbean clientele), the officers did not tell JA why they stopped him. JA's car is also an expensive one, which fits another stereotyped assumption about Black men: that a Black man in possession of an expensive car is likely to be committing an offence.
144. The IOPC responded in July 2018 declining to uphold JA's complaint. In making the decision the IOPC failed to address any of the points made in the appeal, save for the failure to put the insulting language that JA had alleged to the officers themselves. In relation to this issue, the IOPC simply stated that it would be "disproportionate" to seek fresh accounts from the other officers at this late stage. JA's case is now the subject of a civil claim which is close to settling.

### Case study 7: CC

145. On a sunny afternoon in August 2013, two elderly African-Caribbean men (CC aged 64 and his disabled friend 69), were outside one of their homes discussing trimming a hedge. Passing officers approached them for the purposes of a search, accusing them of looking into the front window as if to plan to commit a burglary. CC complained that he was sworn at by an officer and detained in handcuffs. He was arrested on suspicion of

obstructing a search. He faced a criminal trial in the Magistrates Court but was found not guilty of any offence. He went on to take civil action against the Metropolitan Police Commissioner who conceded the claim and in December 2014 agreed to pay damages.

146. Following the civil claim, CC made a complaint to the Metropolitan Police Service, but they refused to commence a complaint investigation. This led to the then-IPCC launching an independent investigation in March 2016 into whether the search was lawful, whether CC was discriminated against, and whether the officers had provided untruthful accounts of the incident.
147. After a protracted delay, the IPCC concluded their investigation in June 2018, refusing to uphold any of CC's complaints. In their report, the IPCC made findings of fact against the complainant, which were not lawfully permitted. The report also failed to consider whether two elderly white gentlemen, one of whom disabled, and seen discussing gardening outside one of their homes, would have been asked to account for their presence by police officers in such a manner.
148. CC challenged the findings by way of judicial review, leading in October 2018 to the IPCC conceding that they had acted unlawfully and agreeing to make a fresh decision. A new decision was made in November 2019, in which the IPCC upheld that an officer swore at the complainant, had used excessive force in applying handcuffs, and did not have any grounds to search CC. However, it refused to uphold the allegations of race discrimination and dishonesty. The successful grounds of complaint were all dealt with only by way of 'management action'.

#### **CRIMINAL PROSECUTIONS FOR POLICE USE OF FORCE: LACKING, LIMP AND POORLY MANAGED.**

149. We recognise that police officers, like all human beings, are fallible, and that the situations they confront can be dangerous and require quick decisions. It is also a feature of the structure of our current system that they are often called upon to provide an auxiliary service to make up for the absence of other, more appropriately qualified professionals – be they mental health professionals or social workers.
150. Nevertheless and indeed arguably because of the central role given to the police, real accountability for misconduct is essential, including through the criminal courts. The cost of not doing so in any real sense is monumental. In financial terms, the costs can be seen in the millions of pounds in damages that police forces pay every year to victims of police misconduct. Between 2014 and 2019 police forces paid out more than £30m in out of court settlements, with the Metropolitan Police Service making up almost two thirds of that figure.<sup>74</sup>
151. In societal terms, the cost persistently manifests, in the mistrust of those who insist that they police by consent. It can also be seen in the generational flash points in our social history: of which Tottenham in 2011 remains the most recent example at scale – although the images of Brixton on our television screens in the last few weeks serve as a reminder of the fragility of those relations.

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<sup>74</sup> The Guardian, [UK police out-of-court settlements total £30m in four years](#), 26.12.19

152. In our view, the prosecution of police officers for criminal conduct sends a clear message to the community that prosecutors are attempting to uphold the rule of law. This is true even where a prosecution results in an acquittal as long as the acquittal comes at the end of a proper investigation and case management by the responsible authorities. In turn, this sends a message to police forces that criminal conduct by police officers plays no part in a just society, that such conduct will not be tolerated and that, where police criminality occurs, it will be exposed and the individual officers involved brought to justice. It sends a message to the public that the rule of law applies equally to all and that no one is above it.
153. The criminal justice system has shown some ability to successfully prosecute police officers for serious criminal wrongdoing. We note that in cases where the victim is “the state” rather than an individual there have been some significant prosecutions not only brought but succeeding. By way of illustration, there have been some high-profile convictions of police officers - or by then former police officers - for drug-related offences and concurrent disciplinary action. One such example is Keith Boots, a police inspector convicted in 2017 of drugs offences leading to a 26-year sentence. Upon his conviction, he was described by Detective Superintendent Simon Bottomley as “a criminal who pretended to uphold the values expected of a police officer but in reality fell a very long way short of the high standards expected with the uniform.”<sup>75</sup> In 2018, Boots was ordered to repay £135,000 as the proceeds of his crime.
154. There are also a number of cases in which police officers have been prosecuted and disciplined for the sexual grooming of often vulnerable women and girls who have been brought into contact with the police. One such example is former Detective Constable Stuart Lunt, who pleaded guilty to misconduct in a public office after pursuing sexual relationships with four female victims of crime. In a statement on 6 April 2018, Detective Chief Inspector Jane Webb said, “...*Police officers are expected to adhere to the highest standards of behaviour in both their public and private lives and Stuart Lunt has clearly failed to adhere to those standards. He has risked undermining the public’s confidence in the police service as a whole and the fantastic work undertaken every day by the vast majority of our staff...*”<sup>76</sup>
155. We cite these examples not to suggest that police misconduct in these areas is prosecuted consistently with ordinary members of the public but because they provide a useful contrast to a notable number of high-profile cases involving the most worrying illustrations of police violence, including fatal force cases, that do not result in any prosecution at all. Where prosecutions are brought, too often they do not result in convictions as a result of prosecutorial failings and inconsistencies. As we explain above, this is compounded by a police complaint system that remains ineffective.
156. This problem is particularly striking because the causes of action that most often feature in civil claims against the police typically correspond with an equivalent offence or offences under the criminal law. This is true of claims in assault and battery and criminal offences against the person, as well as the tort of misfeasance and the crime of misconduct in a public office. In our experience, civil trials are infrequent because police

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<sup>75</sup> BBC News, [Washing machine drugs police Inspector Keith Boots jailed](#), 24.03.17

<sup>76</sup> Lancashire Constabulary, [Former Police Officer Sentenced for Misconduct](#), 06.04.2020

forces will generally settle claims long before they get to court – including as a means to avoid the public scrutiny of a trial. Equally, our experience is that claimants whose civil claims do go to trial are often successful. But in the overwhelming majority of cases, what we do not see are criminal prosecutions.

157. The fact that there have at least been some high-profile trials and convictions in other areas of the criminal law indicates that there are cultural factors at play here: the issue is to do with mindset which the police themselves, the IOPC its former iterations, and the CPS have towards different types of police criminality and the victims of it. Such a mindset is likely to be connected to biases, whether conscious or subconscious, both in terms of race and class. In other words, there is a fundamental problem in the prosecution of police officers for the most egregious examples of excessive use of force, including where individuals die at the hands of the state.
158. What is striking is that this remains the case even after inquests reach highly critical conclusions. This cannot simply be explained by the fact that different standards of proof apply as between criminal and non-criminal law cases. This is especially true of inquest cases involving a verdict (previous terminology) or conclusion (current terminology) of unlawful killing because unlawful killing can only be reached by a jury if they are “sure”. In other words, to reach a conclusion of unlawful killing, inquest juries or coroners have to apply the same standard of proof as they would if they had been empanelled to sit on a Crown Court case.
159. The relief and sense of vindication that is felt by families when an inquest jury returns a critical narrative or makes a finding of neglect or unlawful killing, is typically punctured by a prosecution that is often not brought or (very occasionally) brought but fails.
160. We can cite three cases to illustrate the point:

Ibrahima Sey

161. Ibrahima died at Ilford Police Station on 16 March 1996.
162. The police were initially called to his home by his wife, Amie Sey, who sought help as Ibrahima was experiencing a mental health crisis. When he left his home, he was compliant with police officers, reassured by the presence of a friend, Mr Ndimbalan.
163. However, upon arrival at the police station, officers insisted that Mr Sey had to go into the police station alone. Mr Sey tried to persuade the officers to let his friend go in with him. What happened next was captured in a detailed account produced for INQUEST:

*“The real tragedy unfolded upon their arrival in the rear yard of the police station, when officers refused to allow Mr Ndimbalan to accompany Mr Sey into the police station. Evidence from Mr Ndimbalan as well as some of the officers themselves has described the events that followed: while Mr Sey was still pleading that Mr Ndimbalan should be allowed to stay with him, he was set upon by six to eight officers, one of whom grabbed him in a bear hug from behind while others grabbed his arms and legs so that he was brought down to*

*the ground, and he was then rolled onto his stomach for his hands to be cuffed behind his back.*

*Mr Ndimbalan did not see anything further, because he was ushered away from the scene. However, the evidence from the officers themselves suggests that the sequence of the subsequent events was as follows: a) On two successive attempts to raise Mr Sey to his feet, his legs seemed to buckle and give way, so that he ended up face down on the ground where he seemed to go limp on each occasion while officers continued to hold him down.*

*On the third attempt to raise him, he was still on his knees, with his hands still cuffed behind his back, when one of the officers sprayed him with CS which hit him in a stream around his nose and mouth, and he was seen to lick off the solvent as it dripped down his nose.*

*Once he was on his feet, his head was pushed down towards his knees so that he was doubled over, with his hands still cuffed behind his back, and in that posture he was walked backwards into the police station until he collapsed in a corridor.*

*He was then carried face down and feet first for the rest of the distance into the custody suite where he was placed face down on the floor with his hands still cuffed behind his back. Some four to six officers continued to hold him down by his head, arms and legs - including two officers with their feet on his legs - for the next 15 minutes or more. It was while he was still restrained in this position that he suddenly became relaxed and, after being checked, was found not to be breathing.*

*...[A]n ambulance was called, and the ambulance crew have described their surprise and shock to find Mr Sey still on the floor of the custody area with his hands were still cuffed behind his back when he was showing no signs of life whatsoever. They took him to hospital where he was pronounced dead.”<sup>77</sup>*

164. The INQUEST report goes on to describe the contemporaneous concerns about the use of CS spray and the risks of positional asphyxia. None of those lessons had been learned before Ibrahima was unlawfully killed.

### Christopher Alder

165. Christopher died in police custody in Hull in 1998.
166. Christopher was arrested by police at a hospital in Hull after reports that he had become “aggressive”. Christopher had gone to hospital after being punched by someone at a nightclub. He was taken to Queen’s Gardens Police Station where he became unconscious and ultimately died, face-down, on the floor of a cell, still in handcuffs, his

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<sup>77</sup> INQUEST, Unlawful killing verdict CS Spray Custody Death, October 1997

trousers around his ankles. Christopher's pleas for medical assistance were ignored by officers until it was too late, because they thought he was playing the victim.

167. As if all that weren't bad enough there is some CCTV footage of what happened to Christopher in the police station. There is also footage with audible monkey noises being made while Christopher can be seen incapacitated on the ground. Whilst some CCTV was used, the recording of the "monkey noises" was not identified until two weeks before the criminal trial that eventually followed an inquest jury's finding of unlawful killing. None of the officers were asked about it and the CPS did not seek to rely on it. As the Guardian reported at the time: *"the CPS said it could not be proved the monkey chanting was racist as someone could have been reacting or laughing at an officer who uttered the word "banana", shortly before the monkey chant is heard on the tape."*<sup>78</sup>

168. Meanwhile, the trial collapsed after the trial judge accepted an application to dismiss the manslaughter charges at the close of the prosecution case. The application succeeded on the basis that the jury could not safely convict the officers because of conflicts in the medical evidence about what had caused Christopher to become unconscious in the police station and what had killed him. The misconduct in public office charges were thrown out with them. This came three months into the trial. The legal team representing Christopher's sister Janet Alder, who has been tireless in her campaign for justice, highlighted a litany of failings in the investigation and what it called a "limp" prosecution.<sup>79</sup>

169. This summary is only a fraction of the anguish caused to Christopher and his family. The inquest revealed evidence that – like the Lawrence family before them - the campaign for justice launched in his name was targeted by undercover police officers. At the time, the Hull Daily Mail reported that this was done: *"in anticipation of potential public disorder as a result of the tensions to which it was perceived [Christopher's] death had given rise"*.<sup>80</sup>

170. In 2011 it then transpired that Christopher's body had been left in a mortuary in Hull and a woman called Grace Kamara was wrongly buried in his place. In 2012, a civil claim arising from Christopher's death was settled. In 2015, Janet Alder's application to be recognised as a Core Participant in the ongoing Undercover Policing Inquiry was rejected.

### Sean Rigg

171. Sean died at Brixton Police Station on 21 August 2008.

172. Sean was a talented artist and musician. He also lived with paranoid schizophrenia. At the time of his death, it was apparent that his mental health was in decline. On his final day, four "999" calls were made to police by neighbours and social workers concerned

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<sup>78</sup> The Guardian, Monkey chants as black man died 'not racist', 23.07.02

<sup>79</sup> The Independent, Trial collapses of policemen accused over custody death, 22.06.02

<sup>80</sup> Hull Daily Mail, Death in custody, bodies in wrong graves and a sister fighting for justice: The full Christopher Alder story, 3 March 2019

for his mental state. By the time police officers arrived, it was evident that he was in the early stages of a crisis episode.

173. Police officers decided to handcuff him. This took 30-seconds. Whilst he was struggling against the handcuffs, he was not violent. Despite this, it was decided that he should be restrained. Five officers then took Sean to the ground and restrained him, face-down, in a prone position for 8 minutes. Video footage of the incident shows the officers not only restraining his hands and legs but also an officer putting their bodyweight on Sean's back.
174. He was conveyed to Brixton Police Station in the footwell of the "cage" of a police van – like Ibrahima Sey before him, Sean was held in a "V" shape, so as to further restrict his movement. He was held like this for a further 13 minutes.
175. The journey to the police station was a short one but he was left in the back of the police van, alone, for several minutes, still in handcuffs. One of the officers claimed to be concerned about Sean becoming violent in the custody suite and wanting to clear the area – a claim rejected by the inquest jury.
176. By the time he was moved from the van, Sean was "extremely unwell" and then lost consciousness altogether. He did not make it into the police station alive. He was moved to the caged entrance way at the back of the police station. CCTV footage shows his rapidly, visibly, deteriorating condition. The officers dismissed this. They thought it was an act. Within minutes their fatal error became apparent. A defibrillator was called for, Sean was not breathing. It was too late.
177. The inquest jury found that:

*"Up to the point of being apprehended by the Police, the condition and behaviour of Sean Rigg was physically well but mentally unwell. The majority view [was] that both Sean's physical and mental health deteriorated during the period of restraint...and during the walk to the police van....he was physically unwell due to the oxygen deprivation which occurred during his restraint in a prone position"*

178. The jury's narrative verdict catalogues a litany of preventable failings by both the Metropolitan Police and South London and Maudsley NHS Trust (SLAM), both of which knew that Sean lived with schizophrenia.<sup>81</sup> 10 days prior to his death, SLAM failed to respond to clear signs that Mr Rigg was relapsing.
179. So far as the use of force was concerned, the prone restraint had been "unsuitable", the length of the restraint had been "unnecessary" aggravated by a lack of leadership at the scene. It was "questionable" whether the restraint policies were adequate for their task and whether they had been followed at all. At the heart of it, from the outset, the police failed to recognise that Sean was clearly a vulnerable person – at no time had the

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<sup>81</sup> Summarised in further detail [here](#): and available in full [here](#)

police assessed his physical or mental health condition. The jury could not have been any more condemnatory in their conclusions.<sup>82</sup>

180. For all of this, the CPS decided that there was insufficient evidence to prosecute any of the officers responsible for Sean’s death, not once but twice. The first refusal was in September 2016 (a decision which had been prompted only by a successful legal challenge to an earlier investigation by what was then the Independent Police Complaints Commission). The family exercised their right to ask the CPS to reconsider their decision through the Victim’s Right to Review. In December 2016, the CPS upheld its decision.

*The destabilising narratives that frustrate accountability*

181. These outcomes are not coincidental. They are the product of overt and subconscious biases most obviously based on race but also class. Again, realities that have been underscored by the impact of the pandemic.

182. So far as the paucity of prosecutions is concerned, they are part of a pattern of impunity that runs through even the most egregious cases. A central element of that is the narrative that gets written by those whose conduct is under the spotlight. At the heart of the narrative is a focus on what the victim did ‘wrong’.

183. That narrative tends to have 3 central elements:

- a. Some suggestion that the detained person was involved or thought to have been involved in criminal behaviour, purportedly acting “suspiciously” or “erratically” or “aggressively” or “violently” – but their “victim” status is rarely, if ever, fully acknowledged.
- b. An avowed commitment to notions of “policing by consent” but never making clear whose consent counts.
- c. An insistence on necessity – the use of force though “regrettable”, sometimes “deeply”, so it was justified.

184. We would emphasise that frequently the mere suggestion of these possibilities is enough to distract from where the focus should be, which is on the credibility of any purported justification for the use of force. In our view this matters in the context of this inquiry because conjecture around gang involvement, misattribution of “aggression” and “violence” and descriptions of “erratic” behaviour are often racially loaded. To the casual observer, who may even explicitly claim not to be the type to fall into the trap of stereotyping and racism, such descriptions tend to have a veneer of credibility when they are used in reference to Black people in general and men most often because they are tropes that have passed into acceptable parlance. The result is that too often there is a presumption that a Black person who has come into contact with the police is a suspect long before they are recognised as a victim, if ever.

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<sup>82</sup> Especially since inquest conclusions, whether by jury or Coroner, may not be framed in such a way as to appear to determine any question of criminal or civil liability of any named person: s.10(2) Coroners and Justice Act 2009.

185. Again, we have seen this narrative deployed in the discussions of policing during the pandemic. In the incident involving Desmond Ziggy Mombeyarar – tasered in front of his 5 year-old son on a petrol station forecourt in Manchester; the case of Jordan Walker-Brown, tasered as he jumped over a wall in Tottenham and paralysed as a result; or the lesser reported incident involving Kamyimsola Olatunjoye, a 28-year old Black woman, detained by police in South London, apparently on 9 May 2020. A video shared widely on social media shows her being pinned, to the ground, including by several male officers, and being struck by a female officer who tells her to “stop resisting”. Ms Olatunjoye can be heard shouting “I can’t breathe!” Concerned onlookers can be heard telling the police to stop and expressing concern about the level of force being used. The officers respond by ordering them to “step back” and apparently pushing the person recording the incident further away from them.

186. There are also more tangible challenges that continue to impede the success of prosecutions. What is particularly striking about these is that they reflect routine police practices that would not be accepted of “ordinary” members of the public. We have in mind:

- a. Officers routinely conferring about events that lead to serious injury or death before they give interviews.
- b. Officers being given lengthy periods of time to consider their statements before being interviewed - whilst it is right for any defendant to be given a reasonable opportunity to consider their position, in our experience police officers are given markedly more latitude in this respect.
- c. Failure to maintain robust post-incident management, even though there are established protocols in place that are supposed to maintain standards.
- d. Failure to treat the locations of fatal incidents as crime scenes, leading to the loss of evidence and aggravating fears of a cover-up.
- e. Inadequate training of police officers who are supposed to have specialisms in scene management.
- f. Failures to secure CCTV footage either at all or promptly.
- g. The convenient “loss” of CCTV.
- h. Officers failing to turn on their Body-worn Cameras (if indeed they were wearing them).

187. All of these are issues that frustrated our clients’ search for justice in the cases that we cite throughout this submission. To those we could add the inquest touching upon the death of Dean Joseph. During the late evening and the early hours of 4 and 5 September 2014, armed officers were called to an address at Shepperton Road, Islington, where Dean Joseph had entered his ex-partner’s home and was holding her against her will and threatened her with a knife. Police were called to the property but the first few officers

to arrive had no experience in hostage negotiation. As matters escalated, a firearms unit was called and, ultimately, Mr Joseph was fatally shot.

188. The inquest uncovered fundamental failures in planning and resourcing of the police operation. However, of more immediate relevance, the inquest also exposed the fact that there had been extensive conferring between the police officers whose conduct was being scrutinised. Indeed, the Coroner was so concerned about this that wholly exceptionally, she ruled that the officers should be prohibited from sitting in court until after they had given their evidence. This was considered necessary in an attempt to repair the damage done to public confidence in the administration of justice.
189. The 2017 Lammy report shows that at every stage Black people are disproportionately represented in the criminal justice system. We also know that Black people, most often men, are disproportionately likely to be the subject of force. Against that background, and given the overrepresentation of black people across the criminal justice system, the fact that there is an under representation of police officers who are alleged to have committed crimes and go unpunished is ironic.
190. What is clear to us is that there needs to be fundamental changes of culture on issues of race and accountability more generally. In addition to that, we would advocate for significant reforms and changes in practice in the mechanics of policing investigations of the police by the IOPC, to address the concerns we have raised here. **We ought to be able to expect the same standard and quality of investigation from the IOPC as we ought to be able to expect from the police when they are investigating an allegation of a crime committed by a civilian. Resources dedicated to training on issues like non-conferring, crime scene management, evidence gathering etc, which too often go wrong when the suspect is a police officer, ought to be focused to maximum effect.**
191. Furthermore, in the same way that there are specialist divisions within the CPS for International Justice and Organised Crime, Special Crime and Counter Terrorism and Specialist Fraud, **there ought to be a specialist division dedicated to prosecuting the crimes of state agents, comprised of a cadre of specialist prosecutors who build their experience from doing cases not locally but nationally.** Specialist prosecutors would feel less inhibited by the current dependence of local prosecutors on local police officers in the ordinary prosecution. The opportunity to focus resources would enable a reliable skills base to develop that would provide a safeguard against the sorts of investigative and prosecutorial mistakes that we have alluded to above. We anticipate the mere existence of such a division would go a long way to overcoming a nervousness or reluctance to bring criminal cases against police officers that pervades use of force cases.
192. We perceive a (false) sense among the IOPC and CPS that bringing a case and losing it is somehow worse than not bringing it at all. That cannot be right. There is an extent to which the concern about prosecutions failing reflects an understanding, often only implicitly – that the prospects of a successful prosecution have been stymied by an ineffective investigation. That is compounded by high-profile failures like that of the Alder case. But again, a “limp” prosecution will betray the prosecution’s lack of confidence and

increase the risk of failure. As such, a sense that not bringing a prosecution is better than trying and failing is self-fulfilling, if not self-serving. Accordingly, not bringing cases (or bringing cases that are not adequately prepared or managed) contributes to a sense of impunity, which in turn, which betrays any meaningful notion that British policing is based on consent.

193. Sometimes these cases are complicated. The burden of proof is rightly high. However, those challenges can be overcome to bring other prosecutions and the same ought to happen in matters of life and death in which the police are implicated. As we have sought to illustrate above, this is essential for genuine public confidence in policing and the rule of law.

## CONCLUSION AND RECOMMENDATIONS

194. We are at another defining moment. Whilst the Committee was prompted to resume this inquiry by the stark figures concerning the “enforcement” of lockdown, the reality is that the pandemic is a microcosm of long-entrenched inequalities in policing (as well as in health outcomes). The murder of George Floyd provided a shocking reminder of that – but we can and must look closer to home at the persistence of racial inequality in policing right here.

195. In our experience, a significant – and disproportionate – number of the victims of excessive force and their families in the cases we have worked on are Black. Similarly, a significant – and disproportionate – number of the victims are young, often stifled by social exclusion and socio-economic disadvantage.

196. Therefore, proper accountability for the unlawful use of force is a necessary part of dealing with institutional racism. But it is also integral to the improvement of outcomes for all communities, not just the marginalised ones. As the American Academic Ruth Wilson Gilmore observed<sup>83</sup>:

*“When Black Lives Matter everybody lives better. That’s different from saying that only Black people know what suffering is. Rather, what we see in police killings, for example, in the United States, is that behind the sturdy curtain of racism that makes killing, after killing, after killing of Black people newsworthy, noteworthy and yet not change anything [is that] if we can stop the police killing of Black people, other people won’t be killed; because that is the killing that is so acceptable, continually is justified and argued off as something that police had no choice but to do.”*

A trans-Atlantic truth.

197. We recommend that:

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<sup>83</sup> She can be heard in conversation with journalist Chenjerai Kumanyikaon, in episode 166 of the “Intercepted” podcast with Jeremy Scahill, 10 June 2020. It is available [here](#)

- Consideration is given to the introduction of a tracker or 'RAG' or 'traffic light' system to provide transparency as regards the 'successful' implementation of the Macpherson recommendations.
- Police forces accept that the term 'institutionally racist' remains a useful term.
- A ministerial priority is re-established for all police services to increase trust and confidence in policing amongst minority ethnic communities.
- A process of implementing, monitoring and assessing this ministerial priority against a number of robust performance indicators is established.
- Proposals for automatic non-means tested legal aid funding for families to enable them to have specialist legal representation immediately following a State-related death should be brought forward without delay.
- All police forces should be required to make an express commitment to taking measures to implement recommendation 65 on the development of initiatives to increase the number of qualified recruits who identify as being from a minority ethnic community. There should be regular national reviews of police forces' compliance with this commitment.
- There needs to be fresh focus and attention on implementation of recommendations 60-63 on stop and search.
- There should be monitoring of the extent to which individual forces have include the new Standard of Professional Behaviour that "*Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness*" in their own local guidance, and of the extent to which steps have been taken to ensure that it is properly understood and embedded.

- The IOPC's guidance to the police service regarding the handling of complaints should make more explicit that it reflects the legal framework that would apply if an allegation of race discrimination was litigated in the County Court, including by reference to the statutory shift in the burden of proof set out in the Equality Act 2010, s.136.
- Further work should be done to ensure that this guidance is properly applied by police forces and the IOPC in investigating complaints of discrimination, including through specific training as recommended by the Angiolini review.
- Chief officers should be vigilant to examples of unduly lenient sanctions being imposed for discriminatory conduct by Police Misconduct Panels and seek judicial review in appropriate cases.
- The judgment in *R. (Chief Constable of the West Midlands) v Panel Chair (Police Misconduct Panel)* [2020] EWHC 1400 (Admin) should be publicised and used as the basis for training for all those investigating police complaints of race discrimination.
- The standard expected of IOPC investigations into serious police misconduct should be the same as police investigations into an allegation of a crime committed by a civilian. Resources dedicated to training on issues like non-conferring, crime scene management, evidence gathering etc, ought to be focused to maximum effect.
- There should be a specialist division within the Crown Prosecution Service dedicated to prosecuting the crimes of state agents, comprised of a cadre of specialist prosecutors who build their experience from doing cases not locally but nationally.

**Police Action Lawyers Group**

6 July 2020



## **APPENDIX**

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