

20 NOV 2008

PARLIAMENTARY CRIME AND  
MISCONDUCT COMMITTEE

## RESPONSE TO QPS SUBMISSION TO PCMC 3 YR REVIEW

*'... a tendency by the CMC to over evaluate complaints at the initial assessment stage. The effect of this can increase the allegation count, lead to multiple allegations and often duplicate assessments (i.e. same incident from more than one complainant/informant/notifier will generate multiple complaint reports and allegations)*

*.. similarly a tendency by the CMC to assess complaints collectively as official misconduct pursuant to the Act. The CMC also assesses matters and classify complaints and allegations at the highest possible level, as opposed to a level based on known or likely facts. In such situations, this has the effect of over inflating the seriousness of the allegations.*

The CMC is obliged to assess each complaint, taking the action the CMC considers most appropriate in the circumstances. Each person who makes a complaint must be given a response about the action taken and the reasons for that action. Therefore the CMC makes a separate record for each complaint (and each allegation made) from each complainant or informant even though arising out of the same incident.

However, if there is the same allegation against an officer from more than one complainant arising from the one incident the CMC only counts the allegation once (COMPASS has the functionality to mark an allegation as already counted).

A complaint may contain a number of discrete allegations, which need to be distilled to assist in understanding the nature, scope and extent of the substance of the complaint.

Allegations are identified to direct attention to the issues that need to be dealt with in resolving the complaint. Identifying and recording all the allegations is also important to facilitate analysis to identify possible emerging trends and issues (at officer level through to Service level).

Some years ago the CMC and the QPS jointly developed a list of allegation types and sub-types to facilitate the recording and analysis of the types of conduct that are complained about.

The CMC Case Officer Guide, drawn from the CMC's Assessment policies and procedures, provides:

- *Each discrete incident / act / omission / course of conduct should be the subject of a separate allegation. For example:*

*A complainant alleges that he was assaulted by police (1) outside the Big Nite Out Club when they threw him to the ground, kicked him, and hit him with a baton; then they dragged him to the police vehicle and (2) deliberately rammed his head into the car door rim; (3) they drove the police vehicle erratically throwing him around; at the watchhouse they assaulted him at the (4) counter and then (5) in the cell.*

- *A case officer must identify the appropriate COMPASS allegation type, sub-type and ....*
- *If an incident involves conduct that could fit more than one allegation sub-type, select the sub-type that reflects the most serious aspect of the conduct.*

- *If an incident involves conduct which could be a criminal offence, you do not need to have 2 allegations – one which captures the type of conduct and one which captures the criminal nature of the conduct.*
- *A case officer must be careful to differentiate between a discrete allegation and what are particulars of an allegation [this will depend on the nature of the alleged conduct / course of conduct] to avoid unnecessarily making each particular a separate allegation.*

The Case Officer Guide also provides:

- *Take the nature of the alleged conduct at its highest, having regard to all the circumstances disclosed by the information (and other knowns, such as relevant legislation, policy and procedures), but **do not** speculate about what the complaint **may** be alleging.*

Once the nature of the alleged conduct is identified, the allegation is classified as an allegation of either ‘official misconduct’ or ‘police misconduct’ or ‘other’ (i.e. a ‘breach of discipline’ or a ‘client service complaint’).

It is important for the CMC to distinguish between whether an allegation is one of ‘official misconduct’ or ‘police misconduct’ or ‘other’ as this determines the CMC’s jurisdiction, and in the first two cases the extent of its power to monitor.

It has been suggested that there is a continuum of seriousness of conduct ranging from the least serious, *a breach of discipline*, through the next level, *police misconduct*, to the more serious ‘*official misconduct*’ and finally to ‘a tier beyond’ of criminal conduct.

Certainly a breach of discipline is less serious than either police misconduct or official misconduct. However, the definitions of both official misconduct and police misconduct cover a range of conduct from the comparatively minor in nature to the extremely serious, including criminal conduct.

The allegations distilled and classified are the CMC’s best educated guess about the complainant’s concerns based on the information provided (and the CMC’s knowledge of other known factors).

It is acknowledged that what is alleged may be quite different from any actual conduct that may have given rise to the complaint.

In dealing with a complaint, (other than the level of CMC monitoring), the classification of an allegation as official misconduct or police misconduct is largely irrelevant. The focus of the QPS should be on determining the nature of any actual conduct and taking such action as may be appropriate to deal with any inappropriate conduct of a subject officer and addressing any systemic or prevention issues, and most importantly to resolve the complainant’s concerns (as identified by the allegations).

The classification of the allegation does not determine the level of seriousness of the response to the complaint. An allegation of official misconduct may be dealt with by managerial resolution and an allegation of police misconduct may require a full investigation with a view to criminal prosecution.

In determining the integrity of the QPS and its officers, it is the outcome of the resolution of complaints that is important – that is the actual conduct that is identified and dealt with, not what was originally alleged.

The CMC invites the QPS/ ESC to continue, as it has in the past, to raise issues about individual complaints with the relevant senior CMC officer and we will look to resolve their concerns.

We will also continue to meet regularly to discuss issues generally.

## ATTACHMENT A

The process for the assessment of a complaint by a QPS receiving officer is outlined in the CMC's Breach of Discipline Audit Report which was delivered in draft form to the QPS in December 2007.

### ASSESSMENT PROCESS

#### 1. Allegation types

- 1.1. A complaint may contain a number of discrete allegations<sup>1</sup>; for example a complainant may complain that not only were they assaulted by police, but the police also failed to provide them with medical attention whilst they were retained in custody<sup>2</sup>.
- 1.2. A list of allegation types and sub-types has been developed to facilitate recording the types of conduct that are complained about. ...
- 1.3. Alleged conduct needs to be *coded* under these allegation types and sub-types. For example, an allegation that a complainant was thrown onto the ground by a police officer and punched in the head would be coded as an allegation of 'assault / excessive force' (allegation type) and 'manhandled / wrestled to or thrown on the ground / pushed face into the ground / slammed up against a wall, fence, etc' (allegation sub-type).

#### 2. Process for classification and categorisation

- 2.1. At the outset, on the receipt of a complaint the discrete allegations need to be *distilled* and coded.
- 2.2. Once identified, each allegation must be *classified* as either 'misconduct', a 'breach of discipline' or a 'client service complaint'.
- 2.3. The whole complaint is then *categorised* on the basis of the most serious of the classified allegations; e.g. a complaint containing an allegation of 'misconduct' and allegations of 'breaches of discipline' would be categorised as a 'misconduct' complaint.

#### 3. Distinguishing 'misconduct' and 'breach of discipline'

- 3.1. 'Misconduct' and 'breach of discipline' are mutually exclusive categories. Satisfying the criteria for either 'police misconduct' or 'official misconduct' means that the conduct cannot amount to a 'breach of discipline'.
- 3.2. Therefore, when classifying an allegation contained in a complaint, consideration should first be given to whether the alleged conduct satisfies the definition of 'misconduct' (whether 'official misconduct' or 'police misconduct'). If the alleged conduct does not fall within these definitions, the question whether the alleged conduct amounts to a 'breach of discipline' should then be addressed.

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<sup>1</sup> Allegation means claim, accusation, assertion, contention, charge

<sup>2</sup> Similarly information or a matter, such as an audit report, can raise a number of allegations or undifferentiated issues

- 3.3. In determining whether an allegation about police may involve ‘misconduct’ or a ‘breach of discipline’ (or a ‘client service complaint’), the receiving officer must consider the nature of the allegation at its highest based on the information contained in the complaint and any other known factors relevant to the complaint, such as police practices in certain circumstances.

[*CMC Case Officer Guide provides that:*

*Take the nature of the alleged conduct at its highest, having regard to all the circumstances disclosed by the information (and other knowns, such as relevant legislation, UPA policy and procedures), but do not speculate about what the complaint may be alleging.]*

#### 4. Reporting Obligations

- 4.1. An initial decision must be made about whether a complaint must be reported to the CMC pursuant to section 37 or 38 of the CM Act.
- 4.2. Under the CM Act, the Police Commissioner has a statutory obligation to notify the CMC if the Commissioner:
- reasonably suspects that a complaint involves ‘police misconduct’<sup>3</sup>, or
  - suspects that a complaint involves or may involve ‘official misconduct’<sup>4</sup>.
- 4.3. The obligation to report to the CMC is paramount (see section 39 of the CM Act), and applies regardless of the provisions of any other Act. It is not removed by the general operation of section 7.2 of the PSA Act.<sup>5</sup> Section 7.2 of the PSA Act requires police officers and staff members to report *known or reasonably suspected misconduct* to the Police Commissioner and the CMC.
- 4.4. There is a low threshold for reporting ‘misconduct’ to the CMC. The focus of the duty to report is the suspicion about the complaint (and the nature of any allegation made) and not about any actual conduct that may have given rise to the complaint. The CMC should be notified of a complaint as soon as the requisite suspicion has been formed.
- 4.5. However, under the PSA Act, the duty is to report about actual conduct that is reasonably suspected to have occurred.
- 4.6. The QPS is not required to report suspected or known ‘breaches of discipline’ to the CMC. The QPS obligations in relation to ‘breaches of discipline’ are described in section 7.2 of the PSA Act.
- 4.7. Similarly, there is no reporting obligation to the CMC in relation to ‘client service complaints’.
- 4.8. In determining whether a complaint raises the requisite suspicion under section 37 or 38 of the CM Act, the officer may take into consideration reliable and accurate

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<sup>3</sup> Section 37

<sup>4</sup> Section 38

<sup>5</sup> Section 7.2 (3) is a specific exception under s39 (1) (a) of the CM Act, which applies where the commissioner has exempted a person, in writing, on a complaint involving the *Anti-Discrimination Act 1991*.

information that is already in the possession of the QPS, such as documentary records and CCTV recordings, but may *not* undertake any preliminary inquiries, such as interviewing any witness or officer who is the subject of the complaint. Of course, the complainant may be interviewed when taking the complaint.