

Chapter 5

INTERNAL ACCOUNTABILITY





overnment is duty-bound to hold the police to account. But it is the responsibility of the police themselves to ensure that internal systems guarantee discipline, performance and all round good policing. Conventionally, internal systems rely almost exclusively on police investigating other police. Their effectiveness reflect the degree of commitment the police have to holding themselves to the highest standards.

Two mechanisms define internal accountability. The first is the disciplinary environment, which is made up of both the formal apparatus for censuring misconduct and the informal culture which pervades the establishment. This is the first line of defence against police misconduct. The second is the comparatively new technique of performance management that aims to assess police efficiency through target setting and statistical analysis. When working well together, these two mechanisms lay the foundation for an effective police service that the public can trust.

EXISTING SYSTEMS

For the most part, disciplinary systems within the Commonwealth are similarly designed and their specifics are to be found in police laws and regulations. Everyday discipline relies on the chain of command and supervisory officers summarily deal with minor violations of regulations. But once there is suspicion of more serious wrongdoing, the internal system broadly divides into four parts: complaint, investigation, hearing, and appeal.

In almost all jurisdictions, whether the investigations are done within or outside the policing organisation, the need to maintain an unbroken chain of command means that in the end it is the chief of police who has the final say in resolving complaints internally, forwarding them to be handled by external bodies, following up on recommendations and deciding whether criminal proceedings should be taken up. In some countries, the chief of police also functions as a channel of appeal. Complaints against police personnel can come from a variety of sources: victims of misconduct; other police officers; or even, as in England and Wales, from people who have witnessed misconduct but are not necessarily connected to the victim. How the complaint is dealt with depends on its gravity and the seniority of the person against whom it has been laid. Again, while minor offences and those committed by juniors are investigated by an immediate superior, more serious offences are usually investigated by agencies outside the immediate chain of command such as an internal investigation unit within the police organisation, an ad-hoc disciplinary committee composed of senior police officers (as operates in Cyprus for instance), or an external complaints agency.

Like any rule-bound process, internal disciplinary proceedings are expected to follow due process and allow the accused to know the charges, mount an adequate defence, examine witnesses, rebut evidence and appeal the decision. In Malta, these rights are constitutionally protected, with the officer given the full right to make written representations, be present at oral hearings, and be assisted by a lawyer if desired. In India and Bangladesh, internal rules are clear that all disciplinary inquiries are subject to the laws of natural justice - the officer in question is presented with a charge sheet and given adequate time to prepare a defence.

Types of sanctions depend on the seriousness of the offence and range from censure, docking pay, stopping leave, suspension or demotion, through to dismissal and recommending criminal charges. However, in many jurisdictions, wide discretions allow disciplining authorities considerable leeway in prescribing punishment.

To foster a sense of equity, proportionate sanctions are important, as well as providing recourse for officers to appeal disciplinary decisions. Most countries have channels for appeals built into their disciplinary systems. In many systems this appeal rests with an independent body outside the police chain of command, such as the Public Service Board of Appeal that operates in many Commonwealth Caribbean countries.¹⁷³ Sometimes, these appeal boards have a quasi-judicial status, as in the case of the Police Appeals Tribunal in England and Wales.¹⁷⁴ However, this right to external appeal is far from universal: in both Singapore¹⁷⁵ and Papua New Guinea¹⁷⁶, a junior officer may only appeal a disciplinary decision to the Police Commissioner, against whose decision there is no further appeal.

Internal Disciplinary Units

Discipline is promoted in Commonwealth police organisations by a variety of methods, from simple supervisory oversight and the chain of command to dedicated internal investigations units. Internal disciplinary units range from teams with a general mandate to maintain professional and ethical standards, to specialised wings that investigate specific abuses such as corruption or unlawful violence. Most take complaints from both the public and other police officers and have delegated authority from the chief of police to conduct investigations and advise on what, if any, disciplinary action to take.

In some countries, specialised internal units with very specific mandates have been created in response to reoccurring and glaring abuses. In Sri Lanka, which has one of the highest rates of disappearances, the Disappearances Investigations Unit (DIU) was established in November 1997 to facilitate institution of criminal proceedings against law enforcement officers involved in disappearances. Jamaica's Bureau of Special Investigations looks into alleged police corruption and all cases of shooting by the police, a task earlier carried out by the general Internal Affairs department. India's separate police establishments have vigilance departments mainly focussed on investigating police corruption.

Some police organisations use internal disciplinary units as monitoring instruments as well. The police restructuring process in Sierra Leone in 2000 created the Professional Standards Department that conducts unannounced spot checks on the streets. Early successes included the arrest of officers for setting up unlawful checkpoints to increase opportunities for soliciting "tips" or bribes. The "secret visitor" system in Cyprus involves unannounced visits to police stations by plainclothes police personnel who do not reveal their police affiliation and then report back to the police management on the behaviour of staff at that station. However, such monitoring units are not popular within the police and are often under-resourced as a result.

WEAKNESSES IN PRACTICE

In their design, internal disciplinary systems are usually comprehensive in structure and scope. In practice though, the rigid hierarchies of many Commonwealth police organisations, harking back to their days as tools of colonial governments, do impact upon discipline. The most serious stumbling block in assuring public trust and accountability is the sense that internal discipline is not implemented effectively. In most countries, if disciplinary processes were implemented as set out in law and in adherence with the principles of natural justice, there would be far fewer problems. Tackling the problems with police disciplinary systems is not simply a matter of revising processes, but largely of remoulding police culture to make it work for democratic and accountable policing.

Implementation

There is little that is ambiguous about the parameters of behaviour expected from the police as the standards are well defined by international legislation, constitutions, in-country laws, codes of conduct, police charters, vision statements, and detailed rules and regulations that govern all aspects of policing. These provide direction about issues that range from small disciplinary infractions like dress codes to larger operational policies like the use of force, ensuring police keep within the strict letter of the law on every occasion.

However, the frequency of bad behaviour and poor performance within Commonwealth police organisations indicates that internal standard setting and compliance systems are either badly implemented or deliberately disregarded. In Sri Lanka, for instance, the Supreme Court has criticised the police for failing to put in place adequate procedures for the investigation of complaints.¹⁷⁷ The lack of police officer confidence in their own disciplinary procedures was highlighted in a 2003 survey of the South African Police Service, which found that 82% of those interviewed thought they would not be dismissed if found guilty of taking a USD\$16 bribe in return for not making an arrest.¹⁷⁸

Dangerous Liaisons

In May 2004, the murder of a key police informer disrupted a major taskforce investigation into police corruption in Victoria, Australia. Terrence Hodson was murdered in his bed along with his wife in an execution style killing just before he gave evidence against two detectives charged in serious corruption cases. The victim had aided drug investigators in at least six cases. An internal police intelligence report detailing his role and significance in the investigations had allegedly been leaked to the underworld shortly before he was murdered.¹⁷⁹ Following the murders, the media revealed that other taskforce investigators and their families had also been threatened. The state government had to seriously re-evaluate the security of the witnesses involved in the corruption investigations.¹⁸⁰

When witness intimidation occurs, investigations are derailed and may produce an illegitimate outcome. While effective witness protection programmes go a long way toward protecting the integrity of internal accountability systems, very few countries in the Commonwealth have them in place.

Research shows that an inherent problem is getting police officers to cooperate with internal disciplinary investigations. The particular institutional culture within the police means officers will often close ranks against investigations. Glaring cases of bias add to public certainty that internal investigations are "steered" to favour police. For example, despite credible reports that the death of a Bangladeshi labourer was caused by three police officers, the police resisted investigating for as long as they could. They finally appointed a police investigating team only after considerable public pressure. However, this investigation exonerated the accused and subsequently no one has been charged with the murder.¹⁸¹

Investigators themselves may be unwilling to take on the difficult task of tackling other officers. Further, they may be unclear about process, short on evidence or doubtful whether investigations will ever reach their logical end point. As in any investigation, the outcome of

an internal inquiry will hinge largely on the quality and timeliness of investigations: the greater the delay in investigating, the harder it is to credibly establish the facts of the case.¹⁸² In Papua New Guinea, the ineffectiveness of the disciplinary system means as many as 85% of complaints against the police go unresolved.¹⁸³ In the South Asian context, illegitimate external (often political) interference in police disciplinary matters can mean that internal procedures are simply ignored, particularly in cases where investigating police misconduct

may consequently indict external players as well. Officers, whether guilty or not, are often simply transferred in response to allegations of misconduct, without being subject to a formal disciplinary process. In the worst cases, investigators may be more inclined to believe accused officers in preference to complainants.

Leadership

Police managers are crucial to setting standards of internal accountability and enforcing discipline. Their leadership sets the tone for the prevailing culture and their commitment to creating finely tuned internal processes will determine their worth. Where police forces are designed for unquestioning obedience, internal discipline should pose little problem. However, the comments of Kenya's Standing Committee on Human Rights typify problematic patterns: "Despite public statements from the Commissioner of Police on efforts to reform the Police Department and to deal firmly and effectively with police officers who have committed abuses, the disciplinary sanction imposed on officers found guilty of brutality are frequently inadequate. Officers are rarely prosecuted for using excessive force. Investigations of numerous cases alleging torture...revealed that the "Code of Silence", in which officers fail to report brutality, destroy evidence or threaten witnesses in an effort to cover up abuses, commands widespread loyalty, contributing to a climate of impunity."¹⁸⁴

Rigid hierarchies and strict separation between seniors and juniors can also generate double standards in systems where there is a sharp segregation in the way discipline is meted out. Many systems allow senior officers wide discretions while restricting opportunity for representation, appeal, or complaint to outside authorities. This, along with loose processes and uncertain standards of proof, translates into arbitrariness. Complete separation of disciplinary processes means that senior management themselves may not invest in making sure there is a good internal system in place because they are not personally affected by it. In those jurisdictions with service commissions, juniors are usually investigated and punished by supervisory ranks or special units within the mainstream of the establishment, while senior officers are able to make their case before the service commission. This formula operates in Tanzania, Singapore, Fiji Islands, Solomon Islands and much of the Commonwealth Caribbean. Where these agencies are themselves weak or vulnerable to political pressures, opportunities arise for playing outside the rules of the game.

Where rank rather than gravity of offence decides how misconduct will be addressed, it can also breed resentment and a sense of inequity in the lower ranks. New South Wales

Divergent Disciplinary Proceedings in Tanzania

- The bulk of disciplinary complaints are filed against the rank and file¹⁸⁵ who can appeal to the IGP, while senior police can appeal to the President.
- Punishments may be imposed without a disciplinary inquiry being held for constables and non-commissioned officers whereas senior officers have to be informed prior to the punishment being meted out.
- Senior police officers may have an advocate or any public officer represent them in disciplinary proceedings, while an inspector may have a fellow inspector or senior officer represent him.¹⁸⁶ The rank and file have no right of representation although it is not prohibited.
- Grave offences concerning senior officers are held in camera and not open to the public,¹⁸⁷ however, the same anonymity is not granted to junior officers.
- Further, the rank and file, who make up the bulk of the police, have a limited channel of redress within the force.¹⁸⁸ Disciplinary hearings against them are conducted by an individual not a panel, and that individual is their senior officer.

and Queensland in Australia have dealt with this by clearly defining "major" and "minor" offences and ensuring it is the severity of the offence, rather than rank, that determines the mode and venue of the investigation. Elsewhere, however, the decision about whether an offence is major or minor is left to the police leadership allowing for distortions in the investigative process.

Breaking Ranks

Intimidating fellow officers for "blowing the whistle" is not cowed even by seniority. In the summer of 2003, a Cape Town Police Commissioner actively campaigning against corrupt police personnel went public with evidence of a plot to have him executed. His claims were supported by the Independent Complaints Directorate, which affirmed that the Commissioner had received death threats, probably stemming from a contract put on his head by corrupt police working with local gangs.¹⁸⁹

Without laws providing protection for whistleblowers, police officers wanting to complain against other police officers are often dissuaded from even beginning the process. In an effort to support whistleblowers, the Queensland Police have created an Internal Witness Support Unit within its Ethical Standards Command that provides advice and support to members of the service who identify and report misconduct. The program has developed a reputation within other areas of the Queensland public sector as an example of best practice.¹⁹⁰

Secrecy

Strongly protective of the personnel under their command, police managers are loathe to wash dirty linen in public. This masks the large number of robust disciplinary actions that are routinely taken and the often rigorous and timely steps the police take to maintain discipline, assure performance and punish the guilty. Secrecy contributes to the accountability deficit, feeds the sometimes unfair notion that institutional arrangements are designed to shield police officers from the consequences of bad behaviour, and does nothing to reassure the public that disciplinary procedures are robust - even when action is actually taken against wrongdoers.¹⁹¹ Even in countries where internal disciplinary procedures work relatively well, there is often little trust. A review of the New Zealand police complaints system found that the majority of disciplinary investigations were carried out properly, but in the public mind most were perceived to be biased in favour of police.¹⁹²

When there is little information available regarding disciplinary proceedings or the prosecution of police criminality, the public will have little faith in the system that will hear their complaints. In Swaziland, for example, there appears to be an internal police complaints and discipline unit, but there is no public information about whether it even handles complaints.¹⁹³ This is particularly a problem in Commonwealth countries where the police structure is unclear to the community and even more so where specialist and paramilitary units operate on the peripheries of regular policing.

MAKING CULTURES AND SYSTEMS WORK FOR ACCOUNTABILITY

No system is perfect, but some of the best systems in the Commonwealth for delivering police accountability combine dedicated external complaints agencies with the expectation that the police will continue to tackle the majority of disciplinary breaches. Adequate budgets, the availability of enough people with specialised skills, and strong political will are at the heart of success.

Promoting a mature, collaborative relationship between the police and complaints authorities, ombudsmen and national human rights commissions, is a powerful way in which police leaderships can signal their commitment to taking discipline seriously. Across the Commonwealth, these agencies often have a hard time securing police cooperation for their investigations. For example, in Malawi, the Inspector General of Police at one stage ordered his staff not to appear before the country's Ombudsman after the Ombudsman called for an end to police brutality. The impasse was resolved only when the Minister for Home Affairs intervened.¹⁹⁴

Police leaderships can take a central role in buttressing the work of internal disciplinary units by ensuring sufficient resources and moral support. All Caribbean Police Acts in fact contain provisions that specifically vest the Commissioner of Police with the responsibility to ensure that internal complaints units are supplied with sufficient staff and facilities to receive, record and investigate complaints. With such an important role played by supervisory cadres in creating positive change, it is important they are supported, including to upgrade their skills. This includes providing opportunities to learn specialisations, such as communications, conflict resolution and management. A recent initiative in the Pacific, for example, brought together police middle managers from the islands of Fiji, Tonga, Samoa, Kiribati and Vanuatu to study for a diploma in police management.¹⁹⁵

While a negative culture is a major factor in stopping disciplinary systems from working, creating a positive environment is just as important as well-designed processes for the management of police behaviour.¹⁹⁶ Activities that break down barriers between ranks and build a positive culture in which everyone feels valued and trusted help ensure adherence to common norms. In Botswana, senior police managers have undertaken a series of workshops with juniors to help them put the Police Chiefs of the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO)¹⁹⁷ Code of Conduct into practice on the ground.

Extending transparency bolsters credibility. In many Commonwealth jurisdictions, figures for the number of complaints against police officers received and resolved each year are released. Going beyond figures and telling the stories behind acts of misconduct reinforces the notion that leaderships will not protect or tolerate misbehaviour. In the long run, laying bare the anatomy of internal mechanisms and outcome builds faith both in the public and within the police.



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MANAGEMENT REFORM

Internal accountability mechanisms come into play after an act of misconduct and will usually only be as good as the culture within which they are embedded. Changing the way police organisations function - from forces into services where the citizen "customer" is king - requires attention to the whole system rather than being addressed in a piecemeal fashion.

Modern policing systems require modern management structures. Good management is grounded in principles of good governance and accountability, both individual and organisational. As modern systems of accountability are based on objective criteria, they reward merit and professionalism, constantly review performance and quickly repair weaknesses so that little room is left for misconduct.

The best techniques foster an ethos in which the rights of citizens are upheld and promoted. Delivering on its key responsibility to provide communities their right to safety and security requires the police organisation to focus its vision, structure, processes and actions toward ensuring optimum efficiency in tackling problem areas. Modern management techniques help shape a seamless system that ensures every aspect of policing is accountable.

Commonwealth police organisations are increasingly adopting management principles developed in the world of business, which are yielding good results.¹⁹⁸ One of the most valuable aspects of this management model is the extent to which it can be measured numerically and, through periodic examinations of performance, give a picture of the value for money the police are providing.

"Performance management" uses statistics to look at the police in terms of the results they deliver. The outcomes most often measured are those that address the issue of police effectiveness, particularly the contribution the police make both to tackling criminality and creating a safe environment for the public. Typical measures include crime figures or

opinion poll data regarding public confidence in the police. Such data is then used for two purposes: internally as "management information" to help police leaders focus on improving areas where performance is poor; and externally as a means of explaining police performance to the public. Both can be powerful accountability tools: the former as a way of highlighting problems inside the organisation (by comparing individuals or units and by identifying trends, say in complaints against the police); the latter as a way of expressing the results the police achieve in objective terms, which can then act as the basis for discussion about how to improve the way the police work.

The use of police performance statistics as a means of driving improvements is a relatively recent practice. In some cases, the

Five Values

- Clarity - every police officer knows what the organisation is trying to achieve and the role each plays in delivering this;
- Transparency - senior managers' decisions are made openly, after consulting with staff and the community as appropriate and enabling outside scrutiny if necessary;
- Visibility - within operational limits, the activities of police staff are perceptible to colleagues, superiors and the community;
- Responsibility - every member of the organisation is held personally accountable for his or her actions. This includes fairly judged rewards for good behaviour and results achieved, as well as sanctions for bad behaviour or poor performance; and
- Empowerment - responsibility is devolved to the lowest level possible to enable decisions to be taken as close to the front line as practicable.

performance data is used only as an internal management tool, while in others, the data is published in an effort to shame under-performers into improvement. For example, the focus of much of the current police reform programme in England and Wales is on performance improvement. Every police force has centrally-set targets for a range of policing work, for example, reducing key crimes such as burglary, vehicle crime and robbery. The UK Home Office reviews performance against these targets regularly. Each force's performance is compared against that of its peers (as part of the Home Office's Policing Performance Assessment Framework) and some of these comparisons are published on the Home Office website and thus are open to public scrutiny. Funding is linked to performance - with good performance resulting in increased resources - providing further incentives for police forces to perform against their targets. Although it is early days yet, there are clear signs that police forces are feeling the impact and are focusing their efforts on those areas against which they are being measured.

In South Africa, the Performance Chart System (PCS) was implemented in 2003-4 to gauge and communicate the police's progress and results. The system is able to compare the performance of South Africa's 1,200 police stations and 9 provinces. Performance is assessed monthly, on the basis of an index that measures progress in seven areas: crime prevention; crime reaction; crime investigation; crime information, skill development and professional conduct; vehicle management; and efficiency. The PCS also allocates grades (1 star to 5 star) and ratings (A+ to E-) to all police stations, areas and provinces according to their results. By establishing a relatively transparent, and competitive internal environment, managers and rank and file focus on results and continuously improving their ratings.

In many countries where habits of data collection are not embedded and data collection is incomplete or inaccurate, adopting statistical systems may prove difficult.¹⁹⁹ Where resources are limited, the number of measures of performance can be kept to a minimum and focus on just the priorities that police and the community have identified together. In England and Wales, for example, levels of burglary and vehicle crime were selected as key measures for the police after public consultation identified them as areas that affected people the most.²⁰⁰ The police can use existing methods of supervision to ensure that police officers do not have the opportunity to manipulate the figures - by reviewing diaries and notebooks for example - and systems for auditing performance data can be aligned with those for auditing finances. This happens in England and Wales, where the Audit Commission is responsible for both functions.

Though a valuable addition to holding police to account for performance, there are a number of caveats that need to be considered when adopting appraisal systems that are heavily based on statistics. Notably, improving the performance of controlling crime must not be seen as license to curb respect for human rights or adherence to accepted standards. Other considerations include:

- **When people are measured on particular criteria, they will focus on those points, perhaps to the exclusion of others.** This can be a particular problem for organisations such as the police, where personnel are often required to carry out a range of activities not all of which can or should be measured.
- **When people are measured, they may behave perversely in order to meet their targets.** The police are as good as any other organisation at manipulating figures to present themselves in the best possible light. In some cases, dishonest boosting of the

numbers has cast performance management in a bad light: there are numerous cases across the Commonwealth of the police refusing to record complaints in order to reduce crime figures, arresting the innocent to boost arrest figures, and intimidating or bribing witnesses in order to secure more convictions.

- **Performance data is often very technical and can be difficult to interpret.** This is so for the police themselves, but it is doubly difficult for the public. At this point, interpretation becomes important. Where there is a robust press or active civil society voice which can interpret the figures, then published performance data can be a powerful catalyst for improvements in the police. Where these are not present, however, it can be easily overlooked and therefore, next to useless.
- **Data needs to be analysed with care and tells only half the story.** Statistics can't capture cultural, societal, and human factors that affect police performance. Performance assessments of both organisation and individual must not be based solely on data, and in particular data alone should not be a justification for promotions, reprimands or dismissals.

Although performance management generally takes account of entire police organisations, for results-based systems to be most effective, they need to be made relevant to individual officers. This is normally done through career management, particularly using a good appraisal system.²⁰¹ In modern organisations - and the police are no different - individuals who have performed well are rewarded. Equally, individuals who fail to deliver good results, and in particular those whose discipline record is poor, are not. A fair and transparent appraisal system, with clear standards for promotion or other rewards, is a key part of human resource management in a professional organisation and can be seen as the carrot to the disciplinary system's stick.

Although not a panacea for all police ills, good management practice is a significant and essential part of the framework for holding the police to account. However, these newer models are more often seen in affluent countries, largely because they are expensive, dependent for accuracy on sophisticated technologies often out of reach elsewhere, and less successful when implemented sporadically. The effective functioning of these systems also assumes large active constituencies, a supportive governmental architecture, and formalised community oversight mechanisms with the power to call the police to account for short falls. Nevertheless, the absence of many of these conditions cannot be an excuse for attempting little or nothing. The principles on which modern management philosophy is based - transparency, a relentless focus on key results, and a willingness to reward and punish for good and poor performance respectively - can be transplanted to even resource-poor areas and are critical to police accountability.