Ethical Challenges of Policing in London

October 2014

London Policing Ethics Panel

Chaired by Lord Carlile of Berriew, CBE QC

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About the London Policing Ethics Panel

The 'London Policing Ethics Panel' (LPEP) is an independent panel set up by the Mayor of London, Boris Johnson, to provide ethical advice on policing issues that may impact on public confidence. As part of his Police and Crime Plan for London, the Mayor has challenged the Metropolitan Police to achieve a 20 per cent improvement in public confidence by 2016. LPEP will complement the existing structures in place in the capital to oversee the way London is policed, and will provide in-depth consideration of ethical issues around current and future policing practice in London.

Biographies

Lord Carlile of Berriew CBE, QC – Chair

Lord Carlile is a serving Life Peer of the House of Lords, a former MP of the House of Commons representing Montgomeryshire (1983-1997), a Bencher at Gray's Inn and a practising QC with Barristers' Chambers 9 - 12 Bell Yard. Lord Carlile sits as a Recorder of the Crown Court and as a Deputy High Court Judge. He was the Chairman of the Competition Appeal Tribunal from 2005 until 2013. Between 2001 and 2011 he was the Independent Reviewer of Terrorism Legislation; the Independent Reviewer of the Government's new PREVENT policy, and remains the independent reviewer of National Security policy in Northern Ireland. He plays a senior role in the formulation of policy on mental health and youth justice. He was appointed a Life Peer in 1999 and was awarded the CBE in 2012 for services to national security. He is a Hackney resident and has lived and worked in London for many years.

Baroness Berridge of the Vale of Catmose

Elizabeth became Baroness Berridge of the Vale of Catmose in the County Rutland on 20 January 2011. Within this role Elizabeth works on projects relating to policing, human rights and foreign affairs as well as being patron of the Rutland food bank . Elizabeth founded and chairs the All Party Parliamentary Group on International Freedom of Religion or Belief which spawned her interest in the Central African Republic. She is also a member of the Joint Committee on Human Rights.

Elizabeth studied law at Emmanuel College, Cambridge, and undertook barrister's training at the Inns of Court School of Law in London. She has lived in Trinidad and Tobago and Ghana, and remains keenly interested in both countries and their regions. Since 2005 she has lived in the London Borough of Westminster. Elizabeth is a trustee of the think tank British Future which focuses on identity, integration, migration and opportunity. She is a commissioner on the Conservative Party Human Rights Commission and a member of the advisory council of the Foundation for Relief and Reconciliation in the Middle East, which works to support the inspiring work of Canon Andrew White, vicar of Baghdad.

Grace Ononiwu OBE

Grace took up her post as Chief Crown Prosecutor (CCP) for the West Midlands in June 2014. Previously she was the Chief Crown Prosecutor for the East of England. As Chief Crown Prosecutor she is ultimately responsible for all the prosecution decisions and conduct of cases by CPS lawyers throughout the Area. She also has a personal involvement in many of those cases and there are occasions when she meets victims of crime or their families to explain the reasons for the decisions taken in cases that involve them. Grace qualified as a solicitor in 1990. She originally joined a private firm of solicitors in High Wycombe practising criminal law but joined the CPS in 1991 as a Crown Prosecutor. Grace has held a number of positions in the CPS, which led to her ultimate appointment as Northamptonshire CCP in April 2005, making her the first African Caribbean to be appointed to that position in the history of the CPS. In April 2009 Grace was appointed Legal Director for North Region, CPS London, before becoming Deputy Chief Crown Prosecutor (DCCP) for the London Districts. Grace has made a significant contribution to the CPS Equality and Diversity agenda and was Chair of the National Black Crown Prosecution Association. She was awarded the OBE in 2008.

Meg Reiss

Meg began her career as a prosecutor in Brooklyn, New York investigating and prosecuting both white-collar and violent crime, culminating in her appointment to the Homicide Bureau. In 2000, she joined the international investigative firm Kroll Inc. as a managing director, and in this role served as a deputy monitor of the Los Angeles Police Department under a landmark US federal consent decree that involved overseeing training of street officers and supervisors to reduce discriminatory practices and excessive force while building trust through community policing.

After a serving as global chief of internal investigations for Marsh, Inc, in 2005, Meg joined the Nassau County District Attorney's Office ultimately being promoted to Chief of Staff overseeing more than 350 prosecutors, investigators, and support staff while launching an award - winning Drug Market Intervention initiative that reduced overall crime by 71% and drug crime by 87% in its first year. Meg relocated with her family to London in July of 2012. After finding a home in Hammersmith and settling her daughter into school, she became a member of the federal monitor team working on behalf of the US Department of Justice, Financial Conduct Authority, and Federal Reserve Bank of Chicago, overseeing HSBC's compliance with the terms of their deferred prosecution agreement.

Professor Leif Wenar

Leif Wenar is Professor at the School of Law, King's College London, where he also holds the Chair of Ethics. His degrees in Philosophy are from Stanford and Harvard, and he has been a visiting professor at Stanford and Princeton and the Carnegie Council Program on Justice in the World Economy. He writes on rights, justice and international relations. He is an editor of The Ethics of Philanthropy, and is writing a book on oil. Since first moving to London in 1998 he has lived in Chelsea and Brixton, and since 2004 in Bloomsbury near King's Cross.

1. Introduction

London 1829. The first Commissioners of Police of the Metropolis declare a general principle:

> *'The power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour and on their ability to secure and maintain public respect.'*

'Policing by consent' was a radical new principle in England in 1829, marking a transition from the authoritarian policing traditions. Since 1829 policing by consent has spread to become the philosophy of many police forces in democracies around the world – and it remains the Met Police's guiding principle today. Policing by consent means that while the police have day-to-day authority on the streets, the people have the ultimate authority over the police – both through laws laid down by Parliament and by the oversight provided by elected politicians.

The London Policing Ethics Panel (LPEP) hopes to enhance relations between the public and the police by promoting better understanding on both sides. LPEP will advise the police on the ethical conduct that will earn them the public's continuing approval and respect. The panel's work will also inform the public of the ethical challenges of policing London and so help the people of the capital to understand what they should expect and require of their police officers. By mediating between public and police the panel hopes to contribute to the Met's success in securing the people's continuing consent to police them. We will welcome the public's views on these issues.

The panel holds that the ethics of Metropolitan police officers should be guided by respect for the people of London, and by the goal of protecting the basic rights and freedoms of the people they serve. Principles of truth and transparency, fairness and integrity, inclusiveness and engagement should inform all of the Met's procedures. It should be natural for every police officer to be honest, considerate and responsive throughout every encounter with a member of the public. These goals, principles and attitudes are also part of policing by consent, as seen in another of the principles declared by the Met's earliest commissioners in 1829:

> *"To seek and preserve public favour, not by pandering to public opinion; but by... ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing, by ready exercise of courtesy and friendly good humour; and by ready offering of individual sacrifice in protecting and preserving life"*

Why a London Policing Ethics Panel?

The LPEP has a unique role alongside the College of Policing to consider the distinctive ethical challenges of policing the capital—an environment like no other. Much of the panel's work will be to consider issues of special ethical concern to Londoners, such as surveillance and the use of force. After consultation and consideration we will issue recommendations that will help ordinary Met police officers to do their job to clear ethical standards, and that will enable officers to advise their colleagues about their shared duties. These recommendations will also help officers, Londoners and professional bodies to recognise and challenge unethical practice wherever it occurs.

Since most of the panel's work will be on the details of ethical practice for police officers, in this document we reflect on why being a police officer is such an ethically demanding job.

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We will also consider how social change is making policing even harder, and what it is about London that makes being a Metropolitan police officer one of the most ethically challenging jobs in public service anywhere in the country.

We believe it right for the Constable to be recognised as a fully professional person, with obligations to match the powers of the role. At the end we will mark out next steps for the Met and for the people of London.

2. The Job of Policing

One way to appreciate the job of being a police officer is to think about people who are difficult to deal with. Organised criminals with the veneer of propriety, violent people, dishonest people, distressed, disoriented, drunk and desperate people, people in crisis—if you are a police officer, those people are your job.

Now call to mind some unpleasant environments—situations of family conflict, coerced prostitution, fatal accidents, modern slavery, crime scenes, riots. If you are a police officer, those environments are your workplace.

Adding to the challenge of the police officer's job is the great importance of ensuring that the victims of crime get the care and attention that they deserve.

Being the victim of crime can be one of the most traumatic experiences in a person's life, and often a Constable will be the person first called on to provide victims with the resources and compassion that they need. Witnesses to crime also sometimes need extra help and sensitivity. Finally, adding to the challenges of police work is that these categories can overlap: sometimes the same individuals are offenders and witnesses and victims.

A fair amount of the job of policing involves quickly taking charge of challenging situations – often without notice – and making on-the-spot judgments that may have major impacts on people's lives. Dealing with all of these challenges is highly demanding, and can be draining and stressful. Our focus here is why it also takes real skill and professionalism to do police work in an ethical way.

Ethics

The word 'ethics' derives from the Ancient Greek—it shares a root with 'ethos,' meaning 'the values and beliefs that ground the rules by which a person or group lives.' Ethics is about judging what is the right thing to do in a given situation. A person with good ethical judgment understands all the important factors at stake in the situation at hand, and weighs them correctly so as to determine what is the morally right decision to make.

There is an 'ethics' for each profession: there are medical ethics, legal ethics, business ethics, journalistic ethics, the ethics of public office and more. The study of ethics in each of these areas makes explicit what is good ethical reasoning by people who hold these roles — allowing practitioners to improve their judgments by making those judgments more reflective and consistent. The outputs of an ethical study can range from general principles that capture 'the spirit of the law' to quite detailed precepts and codes.

In policing ethics, all of the distinctive challenges arise from the police's *authority*—in a free society, from the authority that the people give to the police. The office of Constable carries the weight of great authority: police officers have the power to do very dramatic things in the course of doing their jobs.

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The wise use of this authority, within the situations that the police regularly encounter, would strain even the strongest ethical reasoner.

The Ethics of Police Authority

Imagine a neighbour who takes himself to have the authority to tap your phone, track you wherever you go, gain your trust by deception so that he can learn your views and plans, forcibly take your property away from you, handcuff you and throw you into a cage. Imagine that this neighbour also takes himself to have the authority to drive very fast through busy streets and even to assault or shoot people in public places. A Constable who is your neighbour might take himself to have that kind of authority – and, at least in certain very specific situations, that Constable would be right.

The police are granted the authority to engage in activities that would be highly suspect or outright illegal if done by an ordinary citizen: to force, to deceive, to survey, to intrude, to endanger and even to injure. Only extraordinarily important values and urgent goals could justify giving that kind of authority to anyone. The value we place on protecting people's basic rights and freedoms, and the goal of keeping public order, are what justify our granting such authority to the police officer.

It may be a surprise that no mention has been made yet of the police abuse of their authority. For decades newspapers and television shows have been full of stories of 'dirty cops' who misuse their authority for their own financial gain, or to get out of trouble, or to help their friends and relatives, or simply for the tainted pleasure of dominating others.

When police officers abuse their authority in these ways they are obviously committing extremely serious wrongs, which should be detected and punished. In fact these wrongs are so serious and obvious that no ethics panel will need to comment on them: the fact of crime and the justice of punishment in such cases will already be evident to every decent person.

The ethics of policing require more reflection within the grey areas—where the police use their dramatic authority in situations where it is not immediately clear what the right thing is for them to do. Here policing ethics will often speak in abstract terms that require difficult judgments to apply to specific contexts. For example, ethical codes will say that the police use their powers 'wisely and fairly,' that they 'reduce risks as much as feasible,' and that they 'take special care' to avoid harming the innocent. These kinds of abstract ethical requirements can be found as far back as the original 1829 Principles of Policing, where it says that officers are to use physical force:

> *"only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public co-operation to an extent necessary to secure observance of law or to restore order, and to use only the minimum degree of physical force which is necessary on any particular occasion"*

For a police officer to apply such abstract requirements in complex situations requires exceptionally good judgment. Ethics demands a lot of the police in exchange for the dramatic authority that the public give to them: finely-calibrated decisions about when, how and how much of their power they can rightly use. And in our age of high-speed vehicles and high-powered weapons the demands are far greater than in 1829. Which is to say: to do right, the police now need to think right—and fast.

Dealing with the challenging situations that they do, police officers will also face many moral dilemmas: situations where, even if they make the correct judgment and do exactly the right thing, something bad will still happen to someone. The most obvious example of a moral dilemma is when an officer must injure one individual to save or protect another. Enforcing the law can also break up a family, which can be devastating to the family and potentially change the entire course of a young child's life.

Finally, we know that when police officers make mistakes in judgment – as all people do – the mistakes they make can have tragic results, and can attract major publicity too.

The Extra Pressures on Police officers

Adding to the pressure on ethical decision-making, society holds police officers highly accountable for doing their difficult job. The police, unlike for example Civil Servants or Lawyers, often have to make snap decisions on very imperfect information. If the police get it wrong they can be scrutinized by Parliament, years later by a judge, and then criminally prosecuted for an offence as broad as Misconduct in a Public Office. Even the most tangential police contact that leads to a death in the UK requires an investigation by the Independent Police Complaints Commission.
So police officers have at least as much personal responsibility and legal liability as do occupiers of other offices.

"The police, unlike for example Civil Servants or Lawyers, often have to make snap decisions on very imperfect information"

They also carry the great authority to take dramatic actions in risky situations. The job requires them to exercise that authority regularly, often under tight public scrutiny. All of this increases the pressure on the police never to make mistakes—and to shield themselves and each other in case they do.

The Psychology of the Police Brotherhood

The mention of police shielding themselves from scrutiny raises the issue of the internal culture of a police force.

Police officers worldwide tend to put up a 'Blue Wall of Silence' that protects all within the 'brotherhood and sisterhood of police.'

Building this wall can be a response to the ethical pressures that we have seen: officers can face major liability for their decisions in moral dilemmas and for the mistakes they unavoidably make.

So they develop understandings amongst themselves that they will keep the bad things quiet.

What to do about this tendency toward silence will be a key consideration for the panel. We will explore how the ethical pressures on police officers isolate them from the community they are meant to serve and protect. The ethical pressures on police officers can actually make 'policing by consent' even harder than is ordinarily thought.

The police are, we have seen, granted great authority. And this is public authority—the police's job is to enforce our society's most important laws, day-to-day. Because they hold public authority, the public tends to expect police officers to be exemplars of morality. That is, the public expects the police to be ethically better than the rest of us. Yet we have also seen that police officers must regularly make quick judgments in applying abstract concepts to challenging situations. The police will face more ethical dilemmas than most of us, where something bad will unavoidably happen. And when they make mistakes these will often have larger-than-normal impacts on people's lives. So the very people who we expect to be ethically better than us will in fact do more things that are harmful and wrong—just because that is in the nature of their job.

The results of this tension are predictable. The media love police scandals—the drama of the 'high brought low.' The public sees these scandals, and sometimes comes to think of the police as corrupt and hypocritical. The police think that the public have unrealistic expectations about how they should do their jobs – and so the police start ignoring public complaints. Sometimes a force bands together into a self-justifying group that dismisses the public 'who just don't understand.' Sometimes this self-justifying group can even develop a cynical 'us-versus-them' mentality. And these pressures to band together into an inward-looking exclusive group can come from other sources as well.

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Police officers, like soldiers, are often in dangerous situations and so need to form tight bonds to be sure that they 'have each other's backs'. More, Police officers – again like soldiers – have a shared experience of seeing some of the worst and most tragic parts of human life – and they naturally find comfort in being around those who understand their experiences without their having to explain.

On the other side, the authority of police officers makes many ordinary people uncomfortable – so the police find that many people relate to them from a posture of hostility or suspicion or defensiveness. It's hard for police officers to integrate with ordinary people who feel that their behaviour is being monitored. More, some members of the public come from cultures ingrained with such a deep distrust of the police that it will never be overcome.

Given all of this, it is not surprising that police officers have tendencies toward a 'brotherhood' mentality. The group psychology of the brotherhood is a survival mechanism – it is the mindset that 'only those within our group really understand'. The pressures of the job of policing – especially the ethical pressures – tend to work against 'policing by consent', and creates a separateness from ordinary citizens that is in tension with the Peelian notion that the 'police are the public and the public are the police'.

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Policing is Getting Harder

Our ever-changing times are, if anything, making the job of policing even harder. It is not just that the traditional bank robber has been joined by new threats like the terrorist and the cybercriminal.

New social attitudes and new technologies are increasing the ethical and legal pressures on police officers even further.

For one thing, the public has rightly become much less forgiving about what counts as acceptable police behaviour. Policing techniques that would have been routine even 30 years ago – for example regarding the treatment of detainees in police custody – would now be denounced on newspaper front pages and perhaps even branded as human rights violations.

Further, the scrutiny of police – and so the attention to the dilemmas they face and the mistakes they make – has intensified greatly. The media are now everywhere and much more aggressive in their reporting, while social media has greatly increased the number of 'reporters' of police actions. It could be that in the future the police will be required to wear body-mounted video cameras, which can be positive insofar as they protect officers from false accusations and help them consider their actions more carefully. However, body-mounted cameras will also mean that there will be no place for police judgments at the scene – right and wrong – to hide.

The Special Ethical Challenges of Policing London

London is full of celebrations, protests, sporting events and public performances. The Metropolitan Police protect not only the members and the buildings of the UK Government, but also the more than 150 embassies and high commissions in the city. Tourists and commuters come in and out, the resident population turns over quickly with a constant churn. Policing London is a gigantic responsibility, amidst faces that are always changing.

London is also – ethnically, culturally, religiously, economically and by national origin – the most diverse city in the world.

According to the Social Policy Research Centre at Middlesex University:

- The Black and Minority Ethnic population of London is 55% (compared to 33% in Manchester, 20% in England) and the percentage is much higher for young people.

In Newham the BME population is over 83% -- and over 91% of the school-age population.

- More than 40 non-indigenous groups in London have a population of over 15,000. Black Africans recently overtook Indians as the largest BME group.

- Polish is the largest minority language group in London. More than half of the pupils in Inner London have English as an Additional Language. More than 22% of Londoners have a main language other than English; 4% of Londoners are not proficient in English at all.

A Met police officer works within London's diverse population every day – including with those parts of it that want little to do with the police. More than cab drivers, social workers or sales people, a frontline police officer may have direct contact with nearly any type of person in a single day. Perhaps only emergency room medics deal directly with as much of London's diversity as Met officers do.

And our police have an extra ethical challenge that medics do not – again arising from their special authority. Police officers must take charge of situations in a way that is firm but respectful – and so must be especially attuned to the cultural attitudes of the people they are dealing with. This is particularly important and difficult when interacting with Londoners from communities which feel excluded from mainstream society, or those that in the past have had uneasy relations with the public authorities. Being an ethical Police officer in London can sometimes require not only the courage of a soldier but also the skills of a diplomat.

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An Unwelcome Paradox

Drawing the threads together we find the following:

- Policing by consent should mean that while the police have the day-to-day authority to take action against crime, the people have the ultimate authority over the police.
- A fair amount of the job of policing involves taking charge of challenging situations—and police officers are expected to make quick but finely-calibrated judgments about when, how and how much of their power it is justified to use. The police will face frequent moral dilemmas where someone will unavoidably be harmed; and like all humans they will sometimes make mistakes.
- The public expect police to be moral exemplars; yet the police naturally feel that the public judge them by unrealistic standards. So the police tend to band together into a self-justifying brotherhood and even to develop an 'us-versus-them' attitude.
- Adding to the pressure on a Police officer's ethical decision-making, society holds the police highly accountable for doing their difficult job.
- Over the years the public has ratcheted up the pressure on the police by demanding even higher standards and more accountability. And the diversity of London's population adds an extra degree of difficulty to what is already a very demanding job to do ethically and well.

So we reach an unwelcome paradox, though one we must face squarely.

The public gives dramatic authority to the Metropolitan Police to secure their rights and freedoms. The public rightly demands that the police gain and maintain their confidence and consent. But the pressures of using this authority—especially in a complex place like modern London—tend to develop amongst the police self-protective attitudes that make them act in ways that are less likely to gain that consent.

Next steps

The conclusion to draw from this paradox is certainly not that Londoners should be more tolerant of unethical policing. No police officer can excuse abusing the powers entrusted to him or her, and the detection and punishment of such abuse must be a top priority for the Met. In professional discipline cases, the law rightly holds police officers to higher standards of behaviour, whether or not they are on duty when misconduct takes place.

Nor is the lesson that Londoners should tolerate less accountability over the police and their use of power. The extraordinary powers given to the police demand the highest levels of accountability in all areas of policing, and especially in those areas that directly impact people's lives the most. The answer to the question 'who guards the guardians' must be 'the people' — closing this circle is the essence of policing by consent.

Rather, there are two first steps out of the ethical paradox of London's policing:

1) Met Officers are often sent into their challenging work with insufficient ethical training and few opportunities to reflect on good ethical practice. The LPEP hopes to supplement the College of Policing's new Code of Ethics with guidance on specific and difficult areas of policing likely to arise in the capital, so as to help Met officers to work to clear ethical standards. We are preparing a report on Public Encounters with Police. We stand ready to advise on water cannon should the need arise. We are ready to move on topics such as the ethics of undercover policing and the policing of protests. The panel may also recommend enhanced training in the application of the abstract concepts of policing ethics, as well as occasions for peer-to-peer review. Higher standards require increased professionalism, and we will help to clarify what professionalism requires.

2) The public might, in turn, be asked to reflect on the ethical challenges of the police officer's job. A reasonable trade-off for the public's legitimate demand for ever-increasing accountability is a greater public awareness of the pressures and the difficulties inherent in police work. This could involve more direct exposure of the public to frontline policing, for example via 'Ride-Along' schemes. Greater public awareness may lead to a deeper appreciation of the challenges that the police face every day—and more moderate evaluations of the mistakes that even the finest police officer will inevitably make.

The great majority of London's police officers do their jobs honourably and well. The vast majority of Londoners want the police to do well—indeed to do better. The London Policing Ethics Panel looks forward to working with both constituencies, to enhance understanding in both directions. We look forward to contributing to the Met Police's success in securing the ongoing consent of the people of London.

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