

College of Policing Draft Code of Ethics

Comments: Interdisciplinary Ethics Research Group

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The IERG Security Group at the University of Warwick has research expertise in criminal justice ethics as well as considerable experience working with and providing consultation to police and other security officials. We welcome the opportunity given by the College of Policing to provide comments on the current Draft Code of Police Ethics.

Our comments follow the structure of the Draft, indicating areas that we believe would benefit from clarification, expansion or reorganisation.

Comments on Section 1: Introduction

1. Stating the aims and objectives of policing.

The Draft Code of Ethics (hereafter, 'Draft') does not state the aims and objectives or mission of the police. Doing so would help police and the public to judge which behaviour is proportionate, necessary and reasonable in the light of those aims.

2. Clarifying the status of the Code: is it aspirational or minimal?

In the Introduction to the Overview (p.1[2]) it is stated that the Draft provides a framework to set and maintain 'the highest possible standards'. This suggests that the Draft is not merely a statement of the minimal standards necessary for ethically acceptable policing. It suggests a code that demands more than is guaranteed in current domestic and international legal requirements and suggests good practice in the light of some of the moral challenges facing the police, some of the concerns of civil society groups and the public, and some of the principles that ethics would apply in this area. Such a code would provide standards and principles for police to aspire to. The current Draft does demand more than obedience to the law and behaviour that stops short of misconduct, but it does not go so far as to include examples of good practice. The addition of such examples would take the Draft closer towards its aim of providing a framework for the highest possible standards.

3. Making the code of ethics a guide for the public as well as the police

As the Draft states in its Introduction, a police code of ethics helps police to understand what is expected of them in their professional capacity and to make decisions in difficult circumstances. The inclusion in this Draft of a pledge suggests that the aim is to invite police staff to make publicly a personal commitment to uphold those standards, as a condition of membership in the profession. However, a police code of ethics should also help the public, whose consent is necessary to the legitimacy of their powers, to form reasonable and well-informed expectations of police behaviour and to be able to identify and challenge or report behaviour that falls short of proper standards.

Recommendation: the police code of ethics should state in its introduction that it is a document intended for public as well as professional use, to which the public should be able to make reference when holding police to account and to which police officers should be able to make reference when explaining and justifying their actions.

4. Making a distinction between operational and non-operational police employees. The Draft Code of Ethics is addressed to all employees of the police. However, the police officer role and other roles (e.g. legal, administrative) differ greatly in their powers, authority, and prerogatives and their corresponding duties. In order to avoid confusion about which standards apply to whom, a police code of ethics should specify which prerogatives and which duties apply to officers only. This is done in the current Draft only to a limited extent. For example, it is recognised in Section 4 'Use of Force' that only police officers are authorised to use force as part of their work and it is stated clearly that, for this reason, the Draft's guidance on the use of force applies only to them. Similar clarification could be introduced in other standards. For example, many of the stipulations under the heading 'Work and Responsibility' appear to apply only to operational members of staff. Similarly, it seems unlikely that the duties under 'Fitness for Work', such as the obligation to follow the medical recommendations of the force medical officer, apply to staff as well as officers. The fact that the pledge applies to all members of staff but includes commitments relating to all standards, including the use of force, may also add to the confusion.

Recommendation: the police code of ethics should clearly indicate which standards and principles apply to operational staff and which do not. One possible way of doing this would be to separate the document into sections, with one containing all material relevant to all staff and another addressed only to operational staff. Another would be to specify for each standard to whom it applies.

5. Rights of police

The Draft Code of Ethics sets out the duties of police, but not their rights or any special entitlements or restrictions that apply to staff as a whole or to officers only. These should be mentioned, as they affect both decision-making by staff and the expectations of the public. For example, it is important for both the police and the public to know that police officers have a right to use force in their self-defence if attacked by a member of the public in a riot or other volatile situation. It is also important, for example, for front-line police to be assured that they will be supported in their use of discretion by their superiors.

Recommendation: The Police Code of Ethics should, like European Code of Police Ethics, remind police and the public that police officers enjoy the same human and civil rights as members of the public, and mention any special entitlements or restrictions of the profession (e.g. as set out in The Police Regulations 2003).

6. Responding to issues of specific public concern

The reputation of the police is sometimes damaged by scandals. Recent cases have included allegations of excessively close relationships with media outlets, in particular the News of the World; failure to manage effectively the actions of undercover agents, resulting in the disproportionate use of deception by, for example, Mark Kennedy; and the covert surveillance of innocent people such as the family of Stephen Lawrence. A minimal requirement on a model code of ethics for police is that it contain rules and instructions prohibiting the behaviour that produced scandals.

Recommendation: the police code of ethics should address the question of what is an acceptable relationship with the media; use of deception and undercover agents more generally; and use of covert surveillance of innocent people.

7. Enforcement of the Code of Ethics

It is important for both police and the public to know their rights and duties and legitimate expectations in relation to breaches of the Code of Ethics. Section 10 currently informs police of their duty to take action in the face of breaches and suspected or imminent breaches. It also provides guidance as to what reporting options are available, assures staff that legitimate reports will be 'supported' and warns those found to have made a malicious report or to have reported in 'bad faith' that they 'will not be supported'. Given the importance to the maintenance of standards of staff willingness to report breaches of the code, more detail and guidance should be given as to when and to what extent staff will be supported. Where relevant, distinctions should be drawn between conduct that fails to meet the highest possible standards and conduct that fails to meet minimal standards. Only the latter would normally be understood as a breach of standards. Reference should also be made to reports by members of the public.

Recommendation:

- 7.1 The code should indicate the potential consequences for failure to take action in relation to a breach and failure to report a breach.**
- 7.2 The code should indicate what staff reporting a breach can expect in terms of 'support' in advance of an official review and decision regarding their allegation. It should also indicate what action they can expect to face in the event that an allegation is found to have been malicious or in bad faith. Definitions or illustrative examples of malicious and bad faith reports should be given.**
- 7.3 The code should provide guidance to members of the public reporting a breach of the code similar to that offered to people working for the police.**

Comments on Section 2: Standards

8. Categorisation of standards

Some of the standards refer to professional virtues (honesty and integrity; confidentiality); some refer to ethical values (equality and diversity); some refer to specific aspects of police work that often raise ethical issues (the use of force, orders and instructions); and others refer to procedures (challenging and reporting improper conduct). Some of the standards (e.g. work and responsibility; conduct) relate to all police activity. Some of the standards appear to relate primarily to the duties police owe members of the public (the use of force), while others relate to the duties they owe to their colleagues and the profession as a whole (challenging and reporting improper conduct), and many overlap.

9. Consistency between description and content of standards

Sometimes there appear to be discrepancies between the standards as they are described by their titles and the requirements contained within them. This is potentially confusing for police staff who wish to understand what is required of them. It may also be confusing for the public who should be supported by the code to form reasonable expectations of police work and to hold them to account. More importantly, it may create difficulties in identifying which standard has or has not been met. This may impede or obstruct the efforts of those wishing to challenge or report behaviour as well as those whose job it is to adjudicate such reports.

As shown in more detail below, some of the requirements included under the current headings indicate an implicit concern to maintain other standards, which are not currently highlighted in the Draft. Particular examples include openness; incorruptibility; and nondiscrimination. These standards are explicitly highlighted in the codes of police ethics of many other EU countries¹ as well as in the European Code of Police Ethics. They could be included in the Draft Code of Ethics as separate standards, exporting those bullets that relate to them from their place under existing headings.

¹For incorruptibility see Codes of Austria, Bulgaria, Cyprus, Czech, France, Greece, Hungary, Iceland, Latvia, Lithuania, Luxemburg, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden. For non-discrimination see Bulgaria, Czech, France, Greece, Hungary, Iceland, Lithuania, Luxemburg, Netherlands, Romania, Slovakia, Slovenia, Spain and Ireland. For openness see Ireland. References

Issues arising in connection with specific standards are raised in more detail below.

9.1 Honesty and Integrity - this standard currently includes requirements to maintain incorruptibility (not accepting gifts) and avoid abuse of power (not using authority and power to settle personal scores). There is also an apparent inconsistency between the instruction to police to 'show moral courage in doing what you believe is right' and the prohibition from enforcing their 'own ideas of morality'. This may be resolved by clarifying that the role of the police is to enforce the law and maintain the ethical principles that apply to law-enforcement rather than to enforce a personal moral code. recognising that enforcing one's own ideas of morality is problematic from the perspective of the Code only when these ideas conflict with the standards and principles of the Code. Similarly, decisions influenced by 'self interest or personal gain', which are prohibited under this standard, are only problematic when they conflict with or undermine the pursuit of the standards and principles of the Code. To illustrate: taking decisions with an eye to future career promotion is often in practice compatible with respect for the standards of the Code, because a demonstrated respect for those standards is one factor influencing selection for promotion.

Covert policing is included under this standard. This is presumably because it entails deception and thus constitutes an exceptional departure from the requirement to be honest. Given the recent scandals in relation to undercover policing, some more detailed reference to the extent of deception permitted and the justifying reasons might be appropriate.

It may also be relevant to include under this standard any other exceptions to the requirement for honesty. For example, it may be the case that deception is justified if necessary to protect vulnerable individuals from harm or if used in interrogations designed to elicit information that will prevent serious harm.

9.2 Authority, respect and courtesy - this standard currently includes issues relating to abuse of office, discrimination, reputational issues, openness, improper relationships, protection of the vulnerable, and respect and courtesy. In the interests of clarity these issues should be separated out.

9.3 Equality and diversity - In the current Draft this standard appears to refer to requirements of non-discrimination in relation to dealings with members of the public. For example, it requires staff to pledge to be fair and impartial and not to discriminate unlawfully. But impartiality and respect for non-discrimination are different from respect for equality and diversity. Norms of non-discrimination refer to a duty to respect the fundamental right of all citizens to be accorded their rights without distinction on specific grounds. In contrast, equality and diversity tends to refer to efforts to respect and accommodate the beliefs and cultural or ethnic sensitivities of others (both members of the public and colleagues) while carrying out police work. For example, practices such as including a prayer room or allowing time for prayer for members of staff respects diversity. Making efforts to recruit people from diverse

backgrounds and both sexes, to ensure that patrols are mixed, or to allow female victims of rape to be questioned by female officers are other examples of respect for equality and diversity. Failure to do these things would not count as a violation of anyone's right of non-discrimination, but would fail to live up to the ethical standards society expects of police. In contrast, arresting a person because they have a certain racial appearance would violate human rights laws of non-discrimination. While the title of this heading refers to the former kinds of activity, the content refers to the latter. Given the distinction between the two, the Draft should distinguish between them, highlighting the requirements of both.

Discretion is currently included under the heading of equality and diversity, but it is an aspect of police work that has implications that go beyond any potential impact on equality and diversity. For this reason it should be treated separately. The extent to which it applies to staff who are not officers should also be specified.

from authors' 2010 report on Ethics of Border Security for FRONTEX, downloadable at:

http://www.frontex.europa.eu/assets/Publications/Research/Ethics_of_Border_Security_Report.pdf

9.4 Use of Force - This standard cites making an arrest or preventing harm to others as aims that justify the use of force. If police officers also have a right to use force to defend themselves when attacked, this should also be mentioned.

9.5 Orders and Instructions - This standard runs together the requirement to follow orders and instructions with issues of conflicts of interest (business interests and restrictions on private life). These two issues should be distinguished and treated separately.

5.2 indicates some exceptions to the requirement to follow orders. The first is when an officer believes the order to be unlawful. The second is when the officer has other, 'good and sufficient reason' not to comply. This latter exception is quite vague and could be made more specific. For example, it seems reasonable to presume that an officer is not obliged to follow an order when doing so would result in conduct that is prohibited by or conflicts with the Code of Police Ethics.

9.6 Work and responsibilities - this standard provides guidance relating to accountability, conflicts of interest, inappropriate sexual relationships, community engagement, and abuse of authority and power. Many of the provisions appear to be relevant only to police officers, but this is not specified.

9.7 Confidentiality - This standard includes the sub-heading 'social media' (7.3) but there are good reasons to think that social media should not be subsumed under the heading of confidentiality. For one thing, it would not be obvious to an individual seeking quick guidance on their use of social media to look under 'confidentiality' for instruction. More importantly, standards guiding social media use under this sub-heading actually

engage a number of issues other than confidentiality. These include privacy, precaution against incurring conflicts of interest, and reputational issues. The reference to breaches of the data protection act concern the right to privacy and data protection, which is distinct from confidentiality.

9.8 Fitness for Work - Under 8.4 staff must follow medical advice given by the force medical officer unless they have 'reasonable grounds' not to. Further illustration or explanation of what reasons constitute reasonable grounds would be helpful. For example, some kinds of medical treatment might be ruled out by an individual's religious beliefs, and some individuals may prefer to seek alternative therapies for particular medical issues. To the extent that this standard or aspects of it are only relevant to officers, this should be clarified.

9.9 Further suggestions – More could be said about openness. For example, nowhere is it stated that police should display their badge and rank and otherwise indicate their status as police. More could also be said about the need to recognise and respond to the vulnerability of some people dealt with by the police, e.g. victims of crime; children; those who have been exploited; victims of domestic violence.

Comments on Sections 3 & 4: Policing Principles and National Decision Model

10. The Policing Principles set out in Section 3 are broader and more abstract than the standards set out in Section 2. They appear to form the basis for those standards, which provide more applied guidance. Given the more fundamental nature of the Principles, it may make for a clearer structure to the Code for them to precede the Standards. These could then be followed directly by the NDM in Section 4, which provides a guide for how the standards should be incorporated into everyday police decision-making.