

A Code of Conduct for New Zealand Police

In June 2010, the Office of the Auditor General (OAG) released its second monitoring report on New Zealand Police's response to the 2007 Commission of Inquiry into police conduct. Its first report had commended Police for their initial response to the Commission's call for wholesale cultural change. But now, the OAG said, Police's change programme had reached a critical point and was at risk of stalling.

With only seven of the Commission's 47 recommendations fully implemented, the OAG said New Zealand's national police force still had much to do: "The Commission's recommendations will not be implemented just because new systems and processes are in place ... Effective implementation will stand or fall on whether the Police embed the necessary cultural changes."¹

One area in which the OAG was satisfied at Police's progress was its implementation of a Code of Conduct for all 12,000 Police employees, both sworn officers and civilians. Based on a set of core values, the Code (*Exhibit A*) spelled out the expected standards of personal and professional conduct, on-duty and off, and provided a key performance management tool. It was supported by a new disciplinary system, new or improved policies in areas such as technology use and professional relationships, and a concerted focus on ethics training.

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¹ Office of the Auditor-General, Response of the New Zealand Police to the Commission of Inquiry into Police Conduct: Second monitoring report, June 2010, Wellington: OAG, pp5-6

In all respects, the Code of Conduct was a departure from Police tradition. Previously, conduct and disciplinary matters were dealt with through a quasi-military tribunal process that was acknowledged to have many deficiencies. It was time-consuming and costly; officers under investigation might be suspended on full pay for months, even years, while the process dragged on. It was a difficult, cumbersome and expensive way of dismissing poor performers, yet a tribunal finding of serious misconduct was the *only* grounds for firing a sworn officer. At the same time, the tribunal process was a poor tool for managing low-level misconduct of the kind that any other public sector agency would deal with through a robust performance management system. Nor was it conducive to changing behaviour and mindsets of the kind that had prompted the 2007 Commission of Inquiry. As a senior Human Resources manager commented in 2010, “you might go through this very formal process and end up with an officer receiving a \$500 fine – and no-one’s learned anything.”²

The Code of Conduct gave Police a tool to tackle all these deficiencies. Perhaps more than anything, it offered Police a way of addressing behavioural and conduct issues before they escalated. This had never been part of Police culture – as an anonymous Police employee told the OAG, “the average police officer would far prefer to confront an armed Mongrel Mob member than have a difficult conversation with an employee.”³ This reluctance, combined with the anachronistic disciplinary system, meant conduct issues tended to become “bigger and bigger. Police were good at catching people doing something wrong, but they didn’t know how to sit down with [an employee] and say: what’s going on?”⁴

The Code of Conduct, introduced in February 2008, provided the opportunity to do things differently. Two and a half years later, Police managers were describing it as an unprecedented success and a major milestone on the path to transforming the organisation’s heavily criticised culture.

Introduction of the Code

The ostensible catalyst for the Code of Conduct was the 2007 Commission of Inquiry into allegations of disgraceful conduct, including sexual assault, by police officers dating back to the late 1970s. The inquiry unearthed evidence of officers sexually exploiting vulnerable young women, while others condoned their colleagues’ behaviour and protected them with “a wall of silence.”⁵ While finding no evidence of an organisation-wide cover-up, the Commission sharply criticised Police’s handling of this misconduct and the organisational culture within which it occurred. The Commission sent a strong message that it was not just Police systems and procedures that needed to change: attitudes and behaviours, many deeply entrenched, needed to change too. The Commission said a code of conduct to clarify the standards of behaviour expected of police officers was needed as “a matter of urgency.”⁶

In fact, though, Police had begun developing a code well before the Commission released its report in 2007. Senior Police managers considered that a code would promote greater public trust and confidence, and give the organisation a “more flexible range of disciplinary and performance-related responses than available at present” – especially for dealing with lower-level misconduct. Those responses would be “forward-looking”, “timely” and “tailored to the

² Bridget Le Fort, Employment Relations Manager, interview with the author, 4 October 2010

³ Office of the Auditor-General, Response of the New Zealand Police to the Commission of Inquiry into Police Conduct: First monitoring report, June 2009, Wellington: OAG, p61

⁴ Alan Cassidy, Police Human Resources Manager: Organisational and Employee Development. Interview with Richard Norman, 18 March 2010

⁵ Report of the Commission of Inquiry into Police Conduct, Volume 1, Wellington: March 2007, p1

⁶ Report of the Commission of Inquiry into Police Conduct, Volume 1, Wellington: March 2007, p20

individual member”.⁷ A code would be the linchpin of a modern approach to human resource management which Police themselves acknowledged was long overdue

But a code could not be implemented without repealing the 1958 *Police Act* and the associated *Police Regulations 1992*. This was initially to be achieved through the *Police Amendment Bill (No 2)* of 2001, which would have provided a legal basis for the code and allowed Police to manage human resources more effectively. However, the Bill was strenuously opposed by the Police Association (the “union” representing the interests of Police officers and other employees) on several fronts, including pay-related provisions. It languished and was subsequently withdrawn.

But Police, with the support of the Police Association, continued drafting a code. In 2006, with the Commission of Inquiry providing the necessary traction, a new Police Bill was introduced. Once it became law in 2008, the Code of Conduct was finalised at last.

Announcing its pending introduction, Police Commissioner Howard Broad described it as a “primary plank” in the process of cultural change Police was embarking on. Had such a Code been in place in the 1980s, he said, the Police culture revealed in the damning 2007 inquiry might have been different.⁸

The Code was formally introduced on 1 February 2008 and copies distributed to staff. Once the new Policing Act was passed in October, all employees became subject to the Code whether or not they had signed it.⁹

Features of the Code of Conduct

Police’s Code of Conduct is typical of mainstream employment practice. It states the Police Commissioner’s obligations as a good employer, and lists the principles that should guide employees’ professional and personal conduct – honesty and integrity; loyalty, good faith and professionalism; fairness and impartiality; respect for people and property; confidentiality.

Also included is a list of behaviours that constitute either misconduct (such as unexplained absences or lateness, using offensive language, misusing Police property) or serious misconduct (such as falsifying Police records, using excessive force, accessing Police databases for unauthorised purposes, certain criminal convictions). It is emphasised that this list is illustrative only and certainly not exhaustive.

Police said the benefits of the Code would be felt by the organisation, by employees, and by the New Zealand public. Measures of its success would include:

- Consistently high standards of behaviour of Police employees both inside and outside of the workplace.
- A long-term reduction in personal grievances filed by staff against Police.
- Broader use of Performance Improvement Plans for managing behaviour issues in a more efficient, appropriate, impartial and timely manner.

⁷ *ibid* p273

⁸ Transcript of Q&A with Howard Broad, Commissioner of Police, media conference, 3 April 2007, <http://www.police.govt.nz/resources/2007/inquiry-into-police-conduct/transcript.html>, accessed 22/10/10

⁹ The OAG’s first monitoring report, in June 2009, found 62.4 percent of staff had signed it; the second report a year later found more than 70 percent had signed.

- Minor disciplinary issues dealt with at an early stage before they became serious.
- Reduction in the length of time taken to deal with serious misconduct issues.
- A modern employment framework consistent with public/private sector good practice.
- Fairer treatment of employees subject to disciplinary processes, giving rise to fewer grievances.¹⁰

While the document itself might be unexceptional, the Code represented new territory for Police. For the first time, sworn and non-sworn employees were on the same employment footing and subject to the same disciplinary measures. The standards outlined in the Code applied in both on-duty and off-duty settings. The disciplinary process introduced alongside the Code was very different from the previous system – faster, more flexible, and more focused on changing behaviours and attitudes. And the Code required Police to focus on performance management in a way that had never been part of the organisation’s culture.

The Code covers both sworn and non-sworn employees

In 2007, Police had a code of conduct for non-sworn staff reflecting “standard procedure for public service employees under the *State Sector Act 1988*.”¹¹

However, no such code had ever applied to sworn police officers. Instead, they were subject to the *Police Regulations 1992*, which cited some 42 types of unacceptable conduct – everything from lateness to using excessive force. Breaches were dealt with in various ways, the most serious being a disciplinary tribunal hearing. Criminal charges could also be laid (see below for more on the disciplinary process).

That separate standards applied to sworn and non-sworn Police employees was no accident. The Police Association – which, although supportive of a code, did not want the existing disciplinary tribunal disestablished – told the Commission of Inquiry that “sworn members are not simply employees.”¹² In the view of many police officers, their role in society and the singular responsibilities and dangers they faced every day placed them in an entirely separate category from their non-sworn colleagues. They were often in situations requiring instant decisions and the use of force; they dealt with people who were stressed and could be quick to complain. Moreover, as police officers could not readily take their skills to another employer, allegations of misconduct could seriously threaten their livelihood. The Police Association argued that the disciplinary system needed to recognise these distinctive features of policing.

The legal concept of constabulary independence was also sometimes used to justify separate standards for police officers. Although constabulary independence is usually associated with the need for policing to remain free from political intervention, Dr Warren Young of the Law Commission told the Commission of Inquiry that in its most extreme interpretation, it could be considered to mean “a constable was answerable to the law and the law alone”.¹³

¹⁰ Police implementation plan, quoted in Office of the Auditor-General, Response of the New Zealand Police to the Commission of Inquiry into Police Conduct: Second monitoring report, June 2010, Wellington: OAG, June 2010, p61

¹¹ Report of the Commission of Inquiry, March 2007, p199. As New Zealand Police is not formally part of the public service, employees were not subject to the New Zealand Public Service Code of Conduct.

¹² *ibid*, p214

¹³ *ibid*, p153

But Dame Margaret Bazley, who headed the Commission of Inquiry, rejected any argument that the conduct of sworn and non-sworn Police employees should be treated differently:

Other State servants in New Zealand work under codes of conduct and I see no reason why sworn police should be treated any differently in this respect. There is nothing inherent in the role and status of a police officer that justifies a different approach. On the contrary, the issues addressed in my inquiry have satisfied me that the police are in urgent need of a code of conduct for sworn members, and that introducing one as soon as possible will assist in restoring public confidence in the police.¹⁴

Dame Margaret said that the doctrine of constabulary independence was not valid grounds to distinguish between sworn and non-sworn staff: “This [doctrine] is no longer applicable to a modern police force that is located within a statutory framework and subject to many of the same accountabilities as other state agencies.”¹⁵

The Code applies to on-duty and off-duty behaviour

International experts told the 2007 Commission of Inquiry that dual standards for on-duty and off-duty behaviour was one of the defining traits of many police cultures worldwide.

“Officers frequently attempt to draw a very clear line between the two, and argue that what an individual does off duty, in terms of sexual behaviour or other moral issues, is no business of the police management.”¹⁶

But this view was not universal: in some countries, “a sworn police officer is a police officer at all times.”¹⁷ Nor did it apply elsewhere in New Zealand’s state sector. Under the Public Service Code of Conduct (paragraph 6.231), public servants could not bring the public service into disrepute through their private activities.

Dame Margaret said in the historic misconduct she had investigated, the on-duty/off-duty distinction had allowed Police to turn a blind eye to highly inappropriate after-hours behaviour by a few employees. The double standard also hindered the investigation of complaints, and encouraged Police officers to protect each other with a “wall of silence” if complaints were made.¹⁸ For these reasons, she considered that Police officers should understand that their behaviour *always* had to withstand public scrutiny. Some might see this as an unacceptable curtailment of the freedom to act as they wished in private, but she regarded this as “part of the price police officers pay in their choice of career.”¹⁹

The Police Code of Conduct covers all behaviour by police officers, whether on-duty or off. The point is reinforced in various policies, including the Off-duty Interventions Policy which states that “the powers and responsibilities of constables apply 24 hours a day” and the Police Investigations of Complaints and Incidents Policy which notes that: “Police employees are expected to have higher standards of personal conduct than is expected in most other occupations.”²⁰

¹⁴ *ibid*, p272

¹⁵ *ibid*, p272

¹⁶ *ibid*, p287

¹⁷ *ibid*, p287

¹⁸ *ibid*, p288

¹⁹ *ibid*, p287

²⁰ quoted in OAG, Second monitoring report, June 2010, p76

The Code is a foundation for a new disciplinary regime

The pre-2008 regime

As has been noted, Police processes for disciplining and managing the performance of sworn employees were strongly criticised by the 2007 Commission of Inquiry.

These processes were formal, protracted and rigid. Disciplinary or performance management measures could only be triggered by an alleged breach of the Police regulations. A formal charge was then laid before a police disciplinary tribunal comprising a retired judge or senior lawyer. The tribunal hearing itself operated like a criminal trial in the District Court – the police officer had to “plead” to the “charge”, witnesses were called and cross-examined, evidence was formally presented, and submissions made by both parties. The Commission of Inquiry said the formality and adversarial nature of the process had a number of drawbacks, including discouraging public complaints against police officers.

If the charge was proved, the Commissioner determined the penalty. A relatively minor breach could be dealt with through an adverse report (which remained on the officer’s file for four years), a formal reprimand (on file for seven years) or counselling (of which no record was kept). Possible penalties for more serious breaches included reductions in rank, seniority or pay; a fine of up to \$500; or dismissal. A guilty finding by the police disciplinary tribunal was the only grounds to dismiss a sworn police officer.

Police admitted that its disciplinary process was costly, time-consuming, unwieldy, and ineffective as a performance management tool. But there were other shortcomings too. Many disciplinary investigations were abandoned because employees opted to resign before they were complete. The high standards of proof and strict time limits applying to investigations (officers could not be charged with offences that occurred more than 12 months ago) made it rare for employees to be dismissed.

These shortcomings were compounded by Police’s organisational structure. Until 2006, discipline was managed by the Professional Standards group, while performance management was the responsibility of the entirely separate Human Resources group. The Commission of Inquiry said that this functional separation, which it described as “highly unusual”, meant misconduct was dealt with inconsistently across the organisation. It impeded the sharing of information and “[had] done little to assist the police to deal effectively with poor performance or misconduct amongst officers.”²¹

But the Police Association wanted the tribunal process and the separation of Professional Standards and Human Resources retained. Police officers should not be disciplined by non-sworn staff, the association said. The thorough investigation and high standard of proof required by the disciplinary tribunal recognised the unique nature of policing; the rigour of the process also protected officers from mischievous or malicious complaints. It was not the tribunal process that was responsible for poor performance management practices, said the association, but the failings of supervisors.

Commissioner Dame Margaret Bazley disagreed, and recommended dismantling the entire disciplinary system. “In my view”, she said, “[it] has no place in modern police human resources strategy.”²²

²¹ *ibid*, p211-14

²² *ibid*, p219

2008: The new system

Police's new disciplinary regime was introduced in 2008 alongside the Code of Conduct. Any alleged breach of the Code – whether identified by management, by other employees, or through an external complaint – was now initially investigated by a Police employee appointed by the area or district commander.²³ The investigator was tasked with recommending whether the alleged breach constituted misconduct, or serious misconduct.

Matters involving misconduct were dealt with through standard performance management practices – for example, the employee might be required to undergo counselling or training, or receive a formal warning. Matters involving serious misconduct were referred to a disciplinary hearing undertaken by an external employment law practitioner. These hearings were less formal than the old tribunal hearings, but still followed the principles of natural justice and “[took] into account the unique nature of the policing environment.”²⁴ Where serious misconduct was found, the penalty was determined by the Group Manager Human Resources, usually in consultation with the area or district commander. Possible outcomes included demotion, transfer to other duties, or dismissal. Serious misconduct of a criminal nature also came before the courts in the normal way.

The Code allows a stronger focus on performance management

Effective performance management, said the Commission of Inquiry, involved “constructive and facilitative processes” based on a code of conduct and standard employment law, not an adversarial and punitive disciplinary system of the kind Police had traditionally used.²⁵

A robust performance appraisal system was key to good performance management, said the Commission, but Police's was flawed. It was linked to pay and promotion, limiting its effectiveness. Appraisals rarely identified problems and tended to “contain highly favourable and complimentary assessments.”²⁶ Supervisors often considered themselves ‘mates’ of those they were assessing, making them reluctant to identify poor performance. Even if remedial action was proposed, follow-up tended to be inadequate.

The Commission's views were endorsed by PricewaterhouseCoopers (PWC), which was engaged by the State Services Commission in 2009 to review Police's performance management system and recommend reforms. It too found “a weak performance management culture within Police and ... a profound confusion between performance management and disciplinary processes”. Among the performance management system's flaws were “lack of management confidence in providing negative feedback, lack of a developmental approach to good performance, an unusual competency rating system, and a bureaucratic approach.”²⁷

Police acknowledged that its performance management practices were weak. From 2007 onwards, it began developing better systems, encouraging managers to use performance appraisals as staff development tools, and increasing performance appraisal completion rates (historically, below 80 percent in most Police service centres²⁸). In 2010, Police introduced an electronic performance management regime and began integrating it with other HR functions such as training and leave management. Another initiative was the introduction of

²³ External complaints would also be notified to the Independent Police Conduct Authority

²⁴ Regulation 7G(2)(c) Police Regulations 1992

²⁵ Report of the Commission of Inquiry, March 2007, p219

²⁶ *ibid*, p260. Here, the Inquiry was quoting a New Zealand Police Association Field Officer.

²⁷ OAG, Second monitoring report, July 2010, p74-75

²⁸ *ibid*, p76

IAPro, an electronic “early warning” system triggered by complaints about Police conduct: the aim was to identify employee behaviour that might develop into full-blown problems.

Supporting initiatives

Various policies, procedures, instructions and training initiatives were introduced or amended to support the Code. Some directly responded to the Commission of Inquiry’s focus, such as updated Adult Sexual Assault Investigation Guidelines, while others were targeted at cultural change in its widest sense. The annual Organisation Health Audits were broadened to seek employees’ views on matters emerging from the Commission of Inquiry, including the fairness, integrity and professionalism of Police staff.

Key new policies included the Professional Distance Policy, outlining how Police employees should maintain appropriate boundaries between personal and professional relationships and avoid any perceived conflicts of interest or power imbalances. A Report and Be Protected (Safe Reporting) Policy was drafted, requiring staff to report allegations of misconduct or unlawful activity by other staff, and protecting “whistleblowers” from retaliation. Employees’ internet and email usage was audited regularly, and new recruits (but not all employees) were required to confirm their understanding of the Acceptable Use of Technology, Resources and Information Policy. This stated that technology was to be used only to conduct Police business and that Police information systems could never be accessed for personal or private purposes: employees were required to discuss any “grey areas” between personal and professional use with management. Breaches of these policies and others were deemed to be breaches of the Code of Conduct.

Familiarisation training on the Code became mandatory for Police employees, although uptake was slow. By April 2009, nearly half of Police staff had completed this programme,²⁹ and by June 2010, 58 percent had done so.³⁰ The Code was also covered in the mandatory *Contemporary Policing in New Zealand* programme (which 66 percent of staff had completed by June 2009),³¹ alongside training in ethics, discretion and professionalism. At the same time, Ethics Committees were established in all police districts, and nationally consistent guidelines drawn up for their operation

Several information technology initiatives also supported the Code and the cultural change Police was seeking. The IAPro “early warning” software has already been described. In addition, an electronic tool (I-learn) was introduced to notify all employees of critical policies and instructions, and to enable them to test their understanding.

Impact of the Code: the New Zealand Police perspective

In 2010, two years after Police introduced the Code of Conduct, it was described as “a resounding success” by Employment Practices and Police Conduct Manager Jenny Williams. Although some staff had been sceptical, she said the five principles underpinning the Code had now become “part of the language. Most people realise they are based on common sense – they are principles they abide by anyway.”³² Those who had resisted having a single code for both sworn and non-sworn staff because of the ‘special’ nature of policing now appreciated that values such as honesty and integrity were universal.

²⁹ OAG, First monitoring report, June 2009, p27

³⁰ OAG, Second monitoring report, June 2010, p 60

³¹ OAG, First monitoring report, June 2009, p27

³² Interview with the author, 4 October 2010

The mandatory training sessions on the Code had been crucial to its success, said Ms Williams. Recent surveys showed employee awareness at 100 percent. The recruitment of Employee Practices Managers in each policing district had played an important part in the training phase. Charged with implementing and championing the Code, all but one of these managers was recruited from outside Police and had extensive experience of working in organisations with codes of conduct. This gave them, and the Code itself, real credibility, said Ms Williams.

Alan Cassidy, Police Human Resources Manager: Organisational and Employee Development, said the Code had enabled the organisation to start “dealing with a whole lot of issues that wouldn’t have been dealt with [before 2008].” He took encouragement from the fact that, since 2008, the number of employees being investigated for breaches of the Code serious enough to warrant dismissal had been between thirty and fifty a year. Under the old system, there would be six disciplinary tribunals a year at most: “The rest of the offences were not dealt with, or were swept under the carpet.”³³

Police’s responses to misconduct, especially issues that were not serious enough to warrant dismissal, had also changed significantly. Discipline was now more likely to be corrective, educative and proportionate to the problem, rather than punitive. For example, an officer who misused a Police vehicle might be transferred to duties where no vehicle use was required, an employee who had a dysfunctional relationship with another staff member might be transferred to another police station, or a senior officer who had abused his or her position could be moved to non-uniformed duties.

According to Bridget Le Fort, Employment Relations Manager, such sanctions were considerably more effective. They provided opportunities for learning and change – like the investigation process itself, which could be “quite cathartic”:

“At these meetings, these very staunch men can often break down and give a very tearful, emotional, ‘real’ rendition of where they’re at. It’s quite a powerful tool, and one we never used in the past – it used to be a very ‘tick the box’ approach, which meant you never got to that place. Now, it’s all about correcting behaviour.”³⁴

The new disciplinary system also made it easier for Police to dismiss officers whose misconduct was serious and persistent (even if not criminal). Between 1995 and 2005, only 28 of the 262 officers who appeared before the disciplinary tribunal were found guilty: the other cases were either not proven, withdrawn, abandoned, or did not proceed because the officer left the force before the tribunal hearing.³⁵ Since the introduction of the Code, said Wayne Annan, until mid-2010 the General Manager Human Resources for Police: “The ‘serious stuff’ has diminished significantly as people realise there is a real penalty, and it’s called being fired.”³⁶

Areas needing more work

But Police managers accepted that some deep-seated cultural issues still needed to be dealt with before the Code of Conduct could be said to have truly transformed the organisation. The performance management system was now receiving considerable attention, especially the training provided to newly-promoted supervisors. The Employee Practices Managers,

³³ Interview with Richard Norman, 18 March 2010

³⁴ Interview with the author, 4 October 2010

³⁵ Report of the Commission of Inquiry, March 2007, p200

³⁶ Interview with Richard Norman, 18 March 2010

with their wide employment knowledge from outside organisations, were playing a key role in improving performance management practices.

The treatment of “whistleblowers” was another important issue to be addressed, said Jenny Williams. It has been recognised that the close bonds that develop between police officers can cause them to “close ranks” when one is accused of misconduct or criminality. As an international expert on police culture told the Commission of Inquiry, this “can mean that officers are more loyal to their colleagues than to the organisation at large or to the broader public interest ... collegial bonding may lead to a ‘code of silence’ in which fellow officers resist efforts to investigate allegations.”³⁷ Those who break this unwritten code have traditionally been subject to harassment or ostracisation.

Dismantling this tradition would take time, believed Jenny Williams. A 2010 employee survey showed that only 32 percent of staff were aware of the Protected Disclosures Act 2000, which aimed to protect employees who reported serious wrongdoing in their workplaces. While this was better than the 27 percent awareness recorded in 2007, it was still very low and well below the state sector norm. The same survey showed that almost one in five respondents felt they could not raise concerns about workplace harassment without fear of reprisals.

In response, Police said they were working to finalise and implement the Report and Be Protected Policy. It essentially replicated the provisions of the Protected Disclosures Act, and offered significantly more protection to staff. In addition, the Crimestoppers service (a confidential independent phone line enabling people to anonymously report information about crime) had recently been extended to allow Police staff to report on colleagues.

While pleased with the impact the Code was having on Police culture overall, senior managers recognised there was no room for complacency. The Code needed constant reinforcement and reflection to avoid “slipping back into the bad old ways” said Alan Cassidy. Nor could the Code alone achieve sustained cultural change: a raft of other human resource initiatives were needed to support it. For example, more women and minority groups (ethnic and other) were being recruited, consistent with Police’s wish to better reflect New Zealand’s diverse communities in its own organisation. The Commission of Inquiry had pointed out the benefits of this approach, noting how some traditional aspects of police culture – its strongly male orientation, ritualised use of alcohol, tolerance of sexual banter and swearing, and stereotyping of female complainants – had steadily eroded as Police became more diverse during the 1990s.³⁸

Convincing the public

While by 2010, Police insiders could see evidence of cultural change as a result of the Code of Conduct and associated initiatives, it was not clear that the New Zealand public shared their perspective.

Scrutiny of Police conduct had intensified during and since the 2007 Commission of Inquiry. A wiki set up during the review of the Police Act attracted more than 5000 visits by members of the public during one week alone, overwhelming the team moderating it and attracting

³⁷ Professor John Bayley in Report of the Commission of Inquiry, March 2007, p286

³⁸ Report of the Commission of Inquiry, March 2007, p288

international media coverage.³⁹ This high level of public interest in police behaviour remained unrelenting, even as Police worked to implement the Code. During 2009-2010 alone, there was wide media coverage of an officer found guilty of extorting free sex from a prostitute; the conviction of a senior police officer who drove away from a police bar “grossly” drunk; and the conviction of two Dunedin constables whose colleagues reported them for assault during an arrest and were shunned by other officers for doing so. Figures were released under the Official Information Act showing that sixty police officers had faced criminal charges between 2007 and 2009. In July 2010, it was revealed that a former police superintendent who headed the professional standards group responsible for introducing the Code of Conduct had lied about having an affair with a female colleague; he subsequently left the force to take up a senior position elsewhere in the justice sector.

Comments posted online after the Auditor-General’s second monitoring report was released in June 2010 gave an insight into public attitudes towards Police. There were references to “the sick blue line” and “freaks in our police force”, while one person remarked “youths these days are losing every respect for the police and what do you think after police misconduct. No wonder they don’t get RESPECT, it works both ways.”⁴⁰

Given that Police’s ability to enforce the rule of law relied on the community’s absolute confidence, support and trust, these negative perceptions had potentially serious consequences. As Police Minister Judith Collins said in March 2010: “I don’t want the situation where an officer fails to act because they are concerned somebody might be offended or complain.”⁴¹ She also noted that the vast majority of police were performing their jobs well, sometimes with conspicuous courage: three police officers were killed in the line of duty in 2008-2009.

Perhaps more than anything, the relentless public criticism of Police ethics reinforced the scale of the task facing the organisation. As reviews had repeatedly noted, the introduction of the Code was only a beginning: achieving sustainable change in such a large, hierarchical organisation would take both time and tenacity.⁴² As recently as January 2011, yet another review (this time by PricewaterhouseCoopers, for the State Services Commission) questioned whether Police had fully grasped the challenge of making “bold, circuit-breaking, and symbolic moves that will change the DNA of the organisation”. While commending the “theoretical and policy toolkit” Police had developed as part of its reform programme, many of the tools were not well-used in practice “which means that while compliance may technically have been achieved, cultural change has not.”⁴³

Outgoing Commissioner of Police Howard Broad – whose term began in 2007 when the Commission of Inquiry’s report was released – agreed that the job was not yet done, and the need for “relentless and long-term dedication” remained. However, he was keen to reassure the public that “a wave of change [was] forming” at Police. He cited the introduction of the Code of Conduct and the new regime for dealing with misconduct as among the

³⁹ Professor Miriam Lips and Anita Rapson, ‘Emerging Records Management in 21st Century New Zealand Government – Part 2’, Victoria University of Wellington: November 2009, p58. Available at http://e-government.vuw.ac.nz/summary_emerging_erecords.aspx

⁴⁰ <http://nz.news.yahoo.com/a/-/top-stories/7441731/police-must-push-cultural-change-auditor>, accessed 25/6/10

⁴¹ *The Press*, 2 March 2010, p A11

⁴² See for example OAG, First monitoring report, June 2009, p4

⁴³ PriceWaterhouseCoopers for the State Services Commission, Commission of Inquiry into Police Conduct: Report on Change Management Programme Process, Third Phase of Review, November 2010: Wellington, p2

organisation's most significant steps during his time in the top job: "The tools are there, although I agree we need to use them more consistently and energetically."⁴⁴

⁴⁴ Howard Broad, 'Police culture has turned a corner', 19 January 2011, <http://www.police.govt.nz/blog/2011/01/19/police-culture-has-turned-corner/26810>, accessed 15/3/2011

Exhibit A: Extracts from NZ Police's Code of Conduct, 2008

Purpose

The purpose of this Code is to establish the standards of behaviour expected of all New Zealand Police employees. New Zealand's police service is often judged by the way its employees represent it. It is therefore necessary to maintain a high standard of personal and professional conduct. The cornerstone of this Code is that all employees of New Zealand Police will work to the highest ethical standard.

Coverage

The Code of Conduct applies to all New Zealand Police employees (sworn and non-sworn) including permanent, temporary or casual employees, employees on overseas deployment, and persons intending to work. It should be read in conjunction with the relevant employment agreement and Police policies and procedures.

The Code also applies to persons engaged by New Zealand Police (including contractors, consultants and volunteers) and will form part of the contractual arrangements between those persons and New Zealand Police.

Commissioner's Obligations

The Commissioner has a legally binding duty to act as a good employer and to deal with employees in good faith. The Commissioner is committed to applying the Code in a fair, reasonable and objective manner.

The Commissioner acknowledges his/her obligations as a good employer and in doing so will endeavour to:

- maintain open communication and share information where appropriate
- respect the right to privacy and treat people with dignity
- take all practicable steps to provide a safe and healthy working environment
- implement fair and impartial selection and appointment procedures
- provide a written employment agreement setting out the terms and conditions of employment
- provide clear descriptions of duties and expected performance
- offer rates of remuneration in accordance with Police policies
- value diversity and provide equity in employment, including recognition of the aims, aspirations and employment needs of Maori, other ethnic or minority groups, women, and people with disabilities
- provide the opportunity for development and enhancement of individual abilities
- provide a workplace free from harassment and unlawful discrimination
- provide appropriate performance management, disciplinary and dispute procedures and opportunity to redress unfair or unreasonable treatment
- manage change within Police fairly
- meet all legal requirements as an employer.

Honesty and Integrity

Employees are committed and loyal to the vision, values and goals of New Zealand Police. They inspire trust and behave honestly, ethically and with integrity.

- Employees avoid any activities, either work-related or non work-related, that may in any way bring New Zealand Police into disrepute, or damage the relationship of trust and confidence between Police and Government, other agencies or the community.
- All employment related communications are conducted in good faith, in an open and truthful manner.
- Employees take responsibility for their own actions and decisions, and challenge unethical or unprofessional behaviour.

Loyalty, Good Faith and Professionalism

Employees have a duty of trust and fidelity. They are committed to carrying out faithfully the duties and obligations of the role for which they are employed in an efficient, competent and loyal manner, and avoid behaviour that might impair their effectiveness. Employees are proactive in protecting Police's interests, rather than merely refraining from damaging them.

- Employees obey all lawful and reasonable instructions unless there is good and sufficient cause to do otherwise.
- Employees abide by the provisions of all New Zealand legislation, together with instructions, standards, policies and procedures set by Police.
- Employees act professionally at all times and are aware of the impact of their behaviour and decisions.

- Employees support their colleagues in the execution of their lawful duties, and challenge any improper behaviour, as appropriate, including reporting it.
- Employees exercise sound discretion and judgement at all times.
- Employees avoid conduct which may, or does, impair work performance, including the use of alcohol and other drugs or substances.
- All employees maintain a professional image.

Fairness and Impartiality

All employees have a responsibility to act with fairness and impartiality in all dealings with their colleagues and the public, and to be seen to do so, avoiding any potential or perceived conflicts of interest.

- Employees avoid situations that might compromise, directly or indirectly, their impartiality or otherwise calls into question an employee's ability to deal with a matter in a fair and unbiased manner. Employees inform their managers where any actual or perceived conflict of interest could arise.
- Employees ensure that they remain politically neutral in all of their dealings in the workplace.
- Where employees do participate in political matters in a personal capacity, they do not bring themselves into conflict with their primary role as Police employees.
- Employees may participate in public bodies or voluntary associations, or stand for elected roles in local or national government in compliance with the relevant legislative requirements and Police policies.

Respect for People and Property

All employees understand that their role is to acknowledge and respond to our diverse society and to treat all people and their property with dignity and respect.

- Employees are fair and just in carrying out their duties, irrespective of their personal beliefs, values and philosophies.
- Employees respect the rights of all persons and treat members of the public and other employees with courtesy and respect.
- Employees avoid oppressive, harassing or overbearing behaviour or language.
- Employees avoid discriminating behaviour or language in accordance with the Human Rights Act 1993.
- Employees observe and protect the rights of others to privacy and confidentiality.
- Employees avoid any behaviour in the workplace that may cause unreasonable distress to colleagues or interfere with their ability to carry out their duties.
- Employees exercise reasonable care to prevent inappropriate use, loss or damage to property and have regard for the safety of others in the use of Police property and resources.

Confidentiality

Information which comes into an employee's possession in the course of their duties must be treated in confidence and used only for official purposes.

- Care is taken with the handling of information, including ensuring it is used only in accordance with applicable legislation and recognised standards, policies and directives.
- Employees do not access or use confidential, personal, or sensitive information for personal purposes or advantage, or divulge such information to another person outside of official duties or as otherwise required by law.
- Employees do not access personal information for the purpose of satisfying curiosity.
- Official and private information is released only in accordance with applicable legislation and Police procedures, and by employees authorised to deal with requests for information.

Breaches of the Code of Conduct

This Code specifies the ethical and professional standards expected of New Zealand Police employees. To help illustrate those standards the following list provides some examples of behaviours that are not acceptable. This list is not exhaustive. The fact that a certain unsatisfactory behaviour or action is not listed does not mean it is condoned or acceptable.

In determining whether an employee's behaviour constitutes a breach of this Code, regard should be had to the following factors:

- the nature and circumstances of the activity
- the position, duties, and responsibility of the employee
- the consequences of the activity on the ability of the employee to fulfil his or her duties and responsibilities

- the effects of the activity or its consequences on internal or external relationships
- the manner in which similar behaviour has been treated by Police under this Code of Conduct
- the effect of the behaviour on Police's trust and confidence in the employee.

The seriousness and consequences of any breach of the Code depends on the circumstances in which it occurs. In the main, breaches will fall under the heading of misconduct or serious misconduct, the latter being sufficient to justify dismissal having followed due process. However, depending on an assessment of the facts and the degree of the breach, behaviour listed as misconduct can be treated as serious misconduct, and vice versa.

Misconduct

The following are some specific examples of the types of unsatisfactory behaviours which may constitute misconduct and could lead to a formal warning, a final warning, or dismissal following due process: [This list is not exhaustive. There may be other matters that may constitute misconduct according to the circumstances.]

- negligence or carelessness in the performance of duty
- impairment in the performance of duties due to the consumption of alcohol or other drugs or substances
- absence from duty or place of work without proper reason or authorisation
- repeated lateness for work, or repeated absenteeism without just cause
- failure to comply with a lawful instruction, including a reasonable and lawfully given warning, unless there is good and sufficient cause to do otherwise
- undertaking secondary employment without approval
- treating a person harshly
- failure to declare a reasonably foreseeable conflict of interest
- wilful misuse, mistreatment, or otherwise not taking reasonable care of Police property
- behaving in a manner that causes unreasonable distress to other employees or persons on Police premises, including causing distress via indirect means
- using abusive or offensive language.

Serious Misconduct

The following are some specific examples of unsatisfactory behaviour that may be considered serious misconduct and which could justify dismissal without notice following due process: [This list is not exhaustive. There may be other matters that may constitute serious misconduct according to the circumstances.]

- knowingly falsifying a document or Police record/s or knowingly making a false declaration or statement, including an incorrect record of attendance or false explanation of an absence
- sending or saving inappropriate or offensive emails and/or their attachments, or using the Internet or the Police computer system in breach of Police policy
- using any Police databases for an unauthorised or personal purpose
- issuing any unauthorised permit, licence or other document to any person
- admitting to, or being convicted of, any offence which, in the opinion of the Commissioner, brings into question the employee's suitability for continued employment with Police
- insubordination, including publicly criticising Police (except in accordance with Police's policy on Protected Disclosures), or disobedience or abuse directed at supervisors/managers
- using racially offensive language and/or demonstrating racially offensive behaviour
- undertaking secondary employment despite having had the application for that employment declined
- use of excessive force
- wilfully damaging any Police property
- removing or retaining any Police property without authorisation
- removing or taking possession of another employee's property without their permission
- allowing unauthorised access to, or disclosure of any matter or information in relation to Police business.