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Authorised Professional Practice

These notes are aimed at learners completing their Initial training to meet the learning outcomes specified on the National Policing Curriculum. The primary source of content is the Authorised Professional Practice (APP) and the supporting evidence based research of “what works” in policing.

APP can be found at: http://www.app.college.police.uk/
1. Ethics of Professional Policing

These notes are for Pre-Join, Police Officers, IL4SC Phase 1 and PCSOs.

This chapter looks at the relationship between the police and the public and the factors which influence the way in which the police works. It outlines the role of the Code of Ethics in ensuring that each member of the policing profession delivers the highest professional standards in their service to the public and what that means to decision making. You will learn about how to use the National Decision Model to make ethical decisions and find out about the circumstances in which an officer or member of staff may apply discretion.

The chapter also looks at the statutory responsibilities of members of the police and the impact of the Human Rights Act on ethical decision-making.

This chapter what happens when the performance of a member of the police or a police force is called into question. You will find out about the different ways in which the work of the police service is monitored and what happens when a complaint is made. You will look at the regulations which surround police conduct, the role of the Independent Police Complaints Commission and the role of Police and Crime Commissioners.

1.1 Policing By Consent

Policing by consent requires the support of the public, which can be developed only by learning about and trying to understand the matters causing them concern and being seen to be doing something about them. For consent to be sustained the public need to have confidence in us and the service we provide to them.

Policing by consent means that the British police service has traditionally worked with the open support of the public, which involves dialogue about shared goals and of serving the community, not just enforcing the law. In return and in order to be effective the police rely upon the active cooperation of the public. An example of a police function that requires public assistance is the reporting of crime and other breaches of the law. Another example is the giving of information, particularly as a witness or victim when giving a statement, but also in the free offering of general information and intelligence. This type of support from the public is vital to the detection of crime. Anything that threatens this much valued tradition of policing by consent is a cause for concern.
1.2 The purpose of the Code of Ethics

What is meant by ethics?

The philosophical concept of ethics refers to an **external** system of rules which govern people’s behaviours, whether personally or professionally within an organisation. The word “ethics” comes from ancient Greek and can mean:

- Moral principles that govern a person’s behaviour and/or…
- A branch of philosophy dealing with what is morally right or wrong

(The word “moral(s)” tends to indicate the expression or application of ethical values but is, more or less, the Latin equivalent.)

Your integrity is based on your **internal** system of core values which guide your personal conduct: an individual shows integrity when they act and comply with their inner set of values.

A statutory code, of which the Code of Ethics is one, sets out the ‘rules,’ or framework of behaviour that employees are expected to obey. Everyone working in policing is seeking to become ever more professional so it is worth exploring what “professional” means as it will frequently be referenced in relation to ethics in these notes.

Having a code of ethics that supports a professional service is not unique to the police service. Professionals such as doctors, lawyers, teachers and architects all have similar ethical codes which underpin their decision making. Such codes are one of the hallmarks of their profession and contribute to the ethos of putting their client’s needs ahead of their own and help define the behavioural expectations of all members of their respective professional institutions.

The aim of the Code of Ethics is to support each member of the policing profession to deliver the highest professional standards in their service to the public. The Code (which is how it may be referred to from now on for the sake of brevity) sets out the principles and standards of behaviour which are expected from every person who works in policing whether they are a warranted officer, member of police staff, volunteer or someone contracted to work in a police force. Use of the Code will enable everyone to ensure that, all things considered, they are doing the right thing when faced with difficult and complex situations.
1.3 The use of the Code of Ethics as an everyday decision-making framework

The Policing Principles

Underpinning the Code are nine policing principles. (These are built on the “seven Nolan principles” of public life, captured in a report to the government’s Committee on Standards in Public Life in 1995 with “fairness” and “respect” being added.)

They are:

- Accountability
- Integrity
- Openness
- Fairness
- Leadership
- Respect
- Honesty
- Objectivity
- Selflessness

The policing principles are designed to:

- Underpin and strengthen the existing procedures and regulations for ensuring standards of professional behaviour for police officers and police staff.
- Underpin every decision and action across policing – they should become embedded in the way that police professionals think and behave.

Examples of when the principles could take effect:

- When considering whether to make an arrest, how can you make sure that everyone considers your actions are fair?
- You stop a vehicle that has a faulty brake light and discover that the driver is known to you for shoplifting. Should or would this history of criminality affect your decision about whether to prosecute or simply give words of advice?
• If employing a new member of staff, what bearing should the fact that s/he is a member of your tennis club have on your decision?

1.4 Standards of Professional Behaviour

These standards reflect the expectations that the professional body and the public have of those working in policing, whether on or off duty.

They originate from the Police (Conduct) Regulations 2012 that outline the standards of professional behaviour for police officers and special constables and, for police staff, the Police Staff Council Joint Circular 54. A breach of the principles in these standards may result in formal action being taken by the organisation.

The Code of Ethics has adapted the wording in the Regulations and Circular 54 to be positive and aspirational as an everyday supportive guide. However, in misconduct proceedings against police officers, the formal wording of the Police (Conduct) Regulations 2012 will be used.

The ten Standards of Professional Behaviour are summarised below; you are advised to refer to the full set of standards for the detailed explanations:

1. **Honesty and integrity** – I will be honest and act with integrity at all times, and will not compromise or abuse my position. For example, a warrant card or other police identification card should not be used for personal advantage.

2. **Authority, respect and courtesy** – I will act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy. I will use my powers and authority lawfully and proportionately, and will respect the rights of all individuals.

It has been shown that the factors most likely to influence a people’s natural willingness to obey the law are acceptance of the following:

- the law is just and right
- those who enforce the law treat everyone fairly and impartially
- In situations of challenge, everyone will have the opportunity to represent their perspective and therefore be able to exert some influence on the outcome of (policing) decisions

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For example, it may be appropriate to explain to members of the public, why it has been necessary to use certain powers and it will always be important to remain composed and respectful, even in the face of provocation.

3. **Equality and diversity** – I will act with fairness and impartiality. I will not discriminate unlawfully or unfairly.

For example, police officers and staff should take a proactive approach to opposing discrimination, so as to support victims, encourage reporting and prevent further incidents.

4. **Use of force** – I will only use force as part of my role and responsibilities and only to the extent that it is necessary, proportionate and reasonable in all circumstances. The minimum amount of force should be used to achieve the required result and any use of force should be accounted for.

5. Orders and instructions – I will, as a police officer, give and carry out lawful orders only and will abide by Police Regulations. I will give reasonable instructions only, and will follow all reasonable instructions. Police discretion is necessary, but must be used carefully. When making decisions about using your discretion you must:
   - use your training, skills and knowledge about policing
   - consider what you are trying to achieve and the potential effects of your decisions
   - take any relevant policing codes, guidance, policies and procedures into consideration
   - ensure you are acting consistently with the principles and standards in this Code.

6. **Duties and responsibilities** – I will be diligent in the exercise of my duties and responsibilities. This means that you take full responsibility for, and are prepared to explain and justify any actions and decisions taken. You are also aware of the influence of unconscious biases on your actions and decisions.

7. **Confidentiality** – I will treat information with respect, and access or disclose it only in the proper course of my duties. For example, you are familiar with, and abide by the data protection principles in the Data Protection Act 1998. You use social media responsibly and safely and share information with other agencies and with the public, when required, for legitimate purposes.

8. **Fitness for duty** – I will ensure, when on duty or at work, that I am fit to carry out my responsibilities. For example, you should not consume alcohol when on duty, or use
illegal drugs or other legal substances. If you are unfit to work or are somehow impaired for duty, you must inform your line manager or HR department immediately.

9. **Conduct** – I will behave in a manner, whether on or off duty, which does not bring discredit on the police service or undermine public confidence in policing. For example, you should start work on time and be punctual. You should avoid any activities that may bring the police service into disrepute. You should also report any caution or conviction against you for a criminal offence.

10. **Challenging and reporting improper conduct** – I will report, challenge or take action against the conduct of colleagues which has fallen below the standards of professional behaviour. This is irrespective of the person’s rank, grade or role. You should assess, take positive action, or otherwise escalate appropriately any report of unprofessional behaviour or wrongdoing made by someone for whom you are responsible.

1.5 The links between the National Decision Model and the Code of Ethics

The Code promotes the use of the National Decision Model (NDM) so that police officers and staff apply ethical reasoning in accordance with the policing principles and expected standards of behaviour. The NDM, which can be viewed as an enabling tool – allows people to be more questioning of the situations confronting them, more challenging of themselves and empowers them to make ethical and effective decisions.

It places the Code at the very centre of all decision making, encouraging officers and staff to act in accordance with it and to use their discretion where appropriate.

Look at the graphic below and consider how, for example, you would make your decision in the following circumstances:

- Do you take a person who appears to be drunk and incapable back to the police station under arrest or do you identify a capable guardian who can care for them?

- When dealing with a young person who has been caught stealing sweets from a local shop, how do you treat the young person in a way which is just and proportionate whilst keeping the shop keeper satisfied with the policing service they have received?

- When dealing with someone who has committed a traffic offence, do you deal with them by way of a summons/fixed penalty notice or do you exercise your professional judgment and give them a verbal warning?
• When dealing with a report of a public disorder, do you try to calm things down yourself or do you seek support from other patrols, potentially escalating the situation even further?

Whilst it is appreciated that a lot of your decisions will be based on law or force procedures, you will often have to make a decision on the spot. Even where the outcome was not as planned, if the decision was reasonable and proportionate under the circumstances, and if it was made in accordance with the Code of Ethics, the decision maker deserves the support of their supervisor and that of the organisation.

Using the NDM is one way to do this and ensures that you can explain the process for making a decision, even if that decision is proved to have been wrong. You can also review the decisions you have made following an incident in order to assess what lessons you have learned and what you might do differently next time.

The National Decision Model looks like this:

When making decisions you need to ask yourself:

• Is what I’m considering consistent with the Code of Ethics?

• What would the victim or affected community expect of me in this situation?

• What does the police service expect of me in this situation?
• Is this action or decision likely to reflect positively on my professionalism and policing generally?

• Could I explain my action or decision in public?

A useful mnemonic to help you remember the key aspects of the model is: CIAPOAR

C = Code of Ethics
I = Information/intelligence
A = Assessment
P = Powers and policy
O = Options
A = Action
R = Review

As you know, the key word that underpins policing is professionalism. Both the courts and your supervisors (and you, during your sessions of reflective practice) should take into account all evidence that shows that you have acted professionally in the circumstances pertaining at the relevant time. You must be able to show that you have acted in a proportionate and justifiable manner. During fast-moving, dynamic incidents, where there is more than one “moment in time”, the model still applies.

The model should be used to assist in all your decision making, and bear in mind that it can also be used after an event, as part of your reflective practice, to review decisions and actions taken. You are advised to look for more information on the NDM via the e-learning module and APP.

1.6 Conflict between organisational and personal ethics and values

As a member of the police service you may encounter situations that will cause conflict between your personal values/ethics and those of the organisation. You will come across situations in work and day-to-day life that cause you to make difficult decisions because of your role as an officer.
Examples:

- You are off duty and decide to attend a charity fundraising event at a local community centre as a paying guest. You see a close friend at the event who you strongly believe is smoking cannabis quite openly.

- You are told by a friend, that a colleague’s wife, who works in another department, has just started an affair with the departmental head. You know that the husband – your colleague – will be distraught when he finds out.

- You stop a vehicle that is being driven erratically, suspecting a drink driving offence. The driver turns out to be a pro-police local councillor who has recently secured extra funding for a speed awareness initiative.

- What are your thought processes; what would you do; how would you justify your actions, or lack of them?

These are difficult situations that you would find challenging to deal with. Your personal circumstances and your beliefs and values will impact how you feel about situations you come across, however all apparently “guilty parties” should be treated fairly and without bias, no matter how you feel personally.

When starting or having a challenging conversation you should:

- be honest with the individual about your reasons for intervening
- act in a way which is unbiased, consistent and fair
- explain clearly the rationale for the rules and any decisions you make
- maintain objectivity in how you manage the situation
- show respect for the individual throughout the conversation and remain calm

It is vital that when deciding what to do that you should remind yourself of the Code of Ethics. As previously discussed, the NDM will also assist in making ethical decisions that are in line with legislation, policy and guidance.
1.7 Your role and statutory responsibilities in relation to the Code of Ethics

Police Constable

As a police constable you are required to uphold the law fairly and firmly.

Schedule 4 of the Police Act 1996 provides the oath you took on becoming a police officer and states:

“I.....................of.....................do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property; and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law”

The Code of Ethics is about behaving with integrity; not being afraid to choose a difficult path to get the best outcome which may, despite shorter-term pressures, be a longer-term solution. It can be about “going above and beyond” to get the best solution rather than a quick fix. You should behave within the expectations of the Code. By so doing you will also be fulfilling an officer’s duty of care to the community.

There are numerous Acts of Parliament that are relevant to an officer’s duty of care to the community. For example the police service has a duty of care in relation to information and the way it is collected; from whom and why; how it is stored; who it is revealed to and the purposes to which it is put.

What is important to know is that your duty of care extends across a wide range of policing areas, most of which will have a relevant Act of Parliament underpinning that duty. These include, but are by no means limited to:

- Crime and Disorder Act 1998
- Police and Criminal Evidence Act 1984
- Data Protection Act 1998
- Human Rights Act 1998
- Equality Act 2000
Police Community Support Officers

Police Community Support Officers (PCSOs) are members of police staff who are employed, directed and managed by their police force. PCSOs work to complement and support regular police officers, providing a visible and accessible uniformed presence to improve the quality of life in the community and offer greater public reassurance. PCSOs have powers, designated by their Chief Constable, which can be used within the policing area. As with all police staff, the Code of Ethics (and the NDM) apply to the PCSO role.

The difference between standard and discretionary PCSO powers

Standard powers and duties are those that apply to all PCSOs in England and Wales. They ensure that PCSOs have appropriate powers to support the delivery of neighbourhood policing and deal with low level anti-social behaviour and disorder.

Chief Officers retain the ability to designate PCSOs with any of the remaining discretionary powers that may be designated upon a PCSO under Schedule 4 to the Police Reform Act 2002

Remember you will have all the standard powers and duties but may also have some discretionary powers. You must ensure you are aware of which discretionary powers you have been designated with.

For more information about the PCSO role and their powers, please download the National Policing Police Community Support Officer: Operational Handbook from the College of Policing website: http://recruit.college.police.uk/pcso/Pages/default.aspx

1.8 Exercising powers fairly and without bias

Police officers and some staff have a number of powers which may have far-reaching consequences. For example:

- You can search a person, in some cases quite intimately
- You can tell a person that they may be prosecuted and take their fingerprints, photograph and samples of DNA
- You may deprive a person of their liberty through arrest or detention
- If given the authority, you can carry and use a baton and CS spray
- Specially trained officers can carry and use conducted energy devices (Taser)
- Armed officers have the power to carry lethal weapons
You have the potential to mobilise large numbers of other officers and partner agencies in response to major or critical incidents

You could close major highways

You could save the life of a person

You could divert a person from a life of crime or modern day slavery

A police officer has the power to change people’s lives. You will be attending incidents and making decisions in relation to these powers that have an enormous impact. It is essential that you use your powers fairly and without bias. If you are biased, personal values and beliefs can influence your decisions and actions.

By acting in an unbiased way, you will increase the effectiveness of the police service and assist in preventing discrimination towards individuals and the public. It will also ensure that you have credible explanations for using the extensive and impactive array of police powers.

Some of an officer’s powers are statutory and are given in law, such as the power to stop and search individuals in given circumstances. Others are non-statutory and are common law powers, such as the power to arrest for a breach of the peace. You will learn more about these throughout your training, but it is important to remember that all of them should be exercised fairly and without bias. You should always consider the Code of Ethics when determining whether to use them.

1.9 Options to consider when using police powers

Discretion

Police officers have wide powers but there will be times when it may not be necessary to use those powers. Adhering to a law or local policy may not always give the best outcome in the circumstances. There will be occasions where, by exercising your professional judgement and using an alternative resolution, you enable a better solution.

Discretion can be understood as:

- Professional judgement and action (this is Accountability from the Code.)
- Authority to decide and choose (this is Leadership)
- Selecting the best course of action, having recognised and considered all of the alternatives (this is Objectivity)
Although not a statutory right, the proper use of discretion is recognised as a skill you will need to use. It is not your duty to indiscriminately prosecute every person who commits an offence – imagine the public outcry and attitude towards the police if every breach of the law, no matter how small or insignificant, were to be prosecuted.

**Discretion v duty – the use of professional judgement**

By using discretion you will sometimes be making a decision not to act in circumstances where it may seem that your duty as an officer requires you to act. By “not acting”, this may mean, for example, giving an individual an informal warning or advice.

Failure to act completely – as in turning a blind eye – could be interpreted as favouritism or discrimination, which can lead to accusations of neglect of duty, harassment or corruption.

The decision you make must therefore be based on an objective consideration of the factors surrounding an event. You remain accountable for any decision taken – as stated in one of the nine principles underpinning the Code of Ethics. If called upon, you should be able to explain your actions to another person who, although not necessarily agreeing with your use of discretion, will be able to appreciate the grounds for your decision. Using the NDM will help you decide on the most appropriate course of action.

**Points to consider in the use of discretion**

The following points are not comprehensive, but indicate the range of factors which may influence decisions. They should be considered in relation to each other rather than in isolation.

<table>
<thead>
<tr>
<th>Consideration</th>
<th>Point to consider</th>
</tr>
</thead>
<tbody>
<tr>
<td>With whom am I dealing?</td>
<td>How many people are involved?</td>
</tr>
<tr>
<td></td>
<td>What is their attitude to the incident?</td>
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<tr>
<td></td>
<td>What is the physical state of the person?</td>
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<td></td>
<td>Is the person experiencing mental ill-health?</td>
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<td></td>
<td>Is age a factor?</td>
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<tr>
<td></td>
<td>Are they having difficulty in communicating?</td>
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<td></td>
<td>Might their behaviour be a result of their culture, religion, belief or faith?</td>
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<tr>
<td>Consideration</td>
<td>Point to consider</td>
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<td>-------------------------------------</td>
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<tr>
<td>Might there be an underlying</td>
<td>Might there be an underlying vulnerability which is affecting their behaviour such as a medical condition, disability or fear/manipulation by another person?</td>
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<tr>
<td>vulnerability which is affecting</td>
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<tr>
<td>their behaviour such as a medical</td>
<td></td>
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<tr>
<td>condition, disability or fear/</td>
<td></td>
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<tr>
<td>manipulation by another person?</td>
<td></td>
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<tr>
<td>What are the possible outcomes?</td>
<td>Risk of injury to others or myself?</td>
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<tr>
<td></td>
<td>Harm to police/public relations by seemingly excessive enforcement?</td>
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<tr>
<td></td>
<td>Will inaction be viewed as the soft option and the person being ‘let off’?</td>
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<tr>
<td>When did the incident occur?</td>
<td>Is the day one of significance, e.g. a market day, a festival or bank holiday?</td>
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<tr>
<td></td>
<td>What time of day, e.g. rush hour, during school hours, at night?</td>
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<td></td>
<td>Is it wiser to act now or delay until a more appropriate time?</td>
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<tr>
<td>Where is the incident</td>
<td>In a private or public place?</td>
</tr>
<tr>
<td>taking place?</td>
<td>Are members of the public likely to witness the event?</td>
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<tr>
<td>Why I should or should not act?</td>
<td>What else do I know about the individuals, the locations or the incidents?</td>
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<tr>
<td></td>
<td>Is it the best long-term outcome?</td>
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<tr>
<td></td>
<td>How do I prevent this situation occurring again?</td>
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<td></td>
<td>What are my force objectives?</td>
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<td></td>
<td>Is there any specific force policy for the circumstances?</td>
</tr>
<tr>
<td><strong>Consideration</strong></td>
<td><strong>Point to consider</strong></td>
</tr>
<tr>
<td>------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>What course of action could I take?</td>
<td>Do nothing?</td>
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<tr>
<td></td>
<td>Verbal advice?</td>
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<tr>
<td></td>
<td>Who else can help resolve this?</td>
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<td></td>
<td>If the person is vulnerable, can a partner agency help?</td>
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<tr>
<td></td>
<td>Dispersal order?</td>
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<td></td>
<td>Penalty notice?</td>
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<td></td>
<td>Arrest?</td>
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<td></td>
<td>Prosecute?</td>
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</tbody>
</table>

**Discretion at the police station**

When an arrested person is taken to a police station, a supervising officer may still exercise discretion. This may result in a person being cautioned, issued with a penalty notice for disorder or diverted away from the criminal justice system and into the care of health or social services. This could be particularly relevant for juveniles, elderly people, people experiencing mental ill-health and people who have learning disabilities. Displays to an officer of arrogance, resentment or hostility are not in themselves justification for not using discretion – their attitude is irrelevant if a warning is the best method of dealing with the circumstances of a minor offence.

It is important to consider how your actions may look to a bystander and the impact on the community if you persistently use your powers disproportionately or unethically.

**Procedural justice**

The procedural justice model suggests that institutional justice is central to whether people cooperate with the police and obey the law\(^2\). The theory suggests that institutional trust in

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the police is central to these motivations, which is primarily fostered by police fairness and good quality interaction between the police and the public.

Examples of good treatment include:

- being friendly and approachable
- treating people with respect
- making fair decisions
- taking the time to explain these decisions

People are thought to be more likely to accept the decisions of those in authority – even decisions which are not favourable towards them – if they are treated with respect and perceive the decision-making process to be fair. Fair decision making and positive public interaction are also crucial for crime reduction in the longer term: the way officers behave can encourage greater respect for the law and foster social responsibility.

Policing grounded in fair decision-making and respectful treatment could deliver significant benefits because it helps foster police legitimacy, and encourages people to cooperate with the police and not break the law. It ensures that the police can fight crime, without alienating members of the public. The Code of Ethics, based on concepts of fairness and respect, encourages a procedural justice approach to policing.

To find out more about the work of the College of Policing on this topic and other areas of research, visit the What Works section on the College of Policing website.

1.10 The Human Rights Act 1998

The Code requires you to treat everyone with respect. This includes taking account of everyone’s diverse needs.

The European Convention on Human Rights (ECHR) is a treaty agreed by governments and sets out different types of rights and freedoms. The Convention’s provisions protect civil liberties from unjustified interference by the state. They impose duties on the state to take positive measures to protect rights. The purpose of the Human Rights Act 1998 (HRA 98) is to incorporate most of the rights and freedoms set out in the Convention into existing domestic legislation. All our legislation must be compatible with the Convention and domestic courts are obliged to read and interpret legislation in a way which is compatible with Convention rights. Section 6 of the HRA 98 states it is unlawful for public authorities to act in a way which is incompatible with Convention rights.
These rights are complicated and far from clear cut. It will be helpful for you to understand these rights, the differences between them and how these impact on your powers, so further learning is highly recommended.

**Qualified Rights**

Qualified rights can be subject to lawful interference by public authorities in certain circumstances, usually where a balance is required between the rights of the individual and the interests of the public in general. These are usually structured in two parts; the first part setting out the right itself and the second part providing the grounds under which public authorities can legitimately interfere with it.

Qualified rights under the Convention generally set out the grounds on which they may be restricted in the second part of the Article/Protocol, but any restriction must be in accordance with the law, directed towards an identified legitimate aim, and that aim is necessary in a democratic society (that is, it meets the tests of a pressing social need and proportionality).

Listed below are the qualified rights; Articles 8-11 inclusive:

<table>
<thead>
<tr>
<th>Article Number</th>
<th>Article Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Right to respect for private and family life.</td>
</tr>
<tr>
<td>9</td>
<td>Freedom of thought, conscience and religion.</td>
</tr>
<tr>
<td>10</td>
<td>Freedom of expression.</td>
</tr>
<tr>
<td>11</td>
<td>Freedom of assembly and association.</td>
</tr>
</tbody>
</table>

Interference with a qualified right by public authorities (which include police officers and PCSOs) can only be justified if the interference is prescribed by or in accordance with domestic law, is proportionate and is necessary in a democratic society in pursuit of one or more ‘legitimate aims’ specified in the relevant Article. These aims vary across different Convention rights so it is important to examine the text of the relevant Article.

**Example:**

If it was felt necessary to tap into a known drug dealer’s telephone, therefore interfering with their right to respect for private and family life (Article 8), this could only be done if:
There was a law that provided the power and

It was necessary in a democratic society

It was for one of the interests prescribed in Article 8.

In this example, although the Regulation of Investigatory Powers Act 2000 provides the power to carry out the interception of the drug dealers telephone conversations, would the method used be proportionate to the legitimate aim; i.e. is this the least intrusive way in which evidence could be gathered?

**Absolute and Limited Rights**

Absolute rights such as Articles 2, 3, and 4, cannot be derogated from, restricted to or balanced against any public interest.

Limited rights can be restricted but only in explicit and finite circumstances set out in the Articles concerned. The right to liberty (Article 5) is an example of a limited right.

The following list covers absolute and limited rights:

<table>
<thead>
<tr>
<th>Article Number</th>
<th>Article Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>The right to life.</td>
</tr>
<tr>
<td>3</td>
<td>Prohibition of torture.</td>
</tr>
<tr>
<td>4</td>
<td>Prohibition of slavery and forced labour.</td>
</tr>
<tr>
<td>5</td>
<td>Right to liberty and security. (Limited right)</td>
</tr>
<tr>
<td>6</td>
<td>Right to a fair trial. (Limited right)</td>
</tr>
<tr>
<td>7</td>
<td>No punishment without law.</td>
</tr>
</tbody>
</table>

**Article 14 of the convention – Prohibition of Discrimination**

This states that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
1.11 Applying human rights principles

As already discussed, qualified rights can be interfered with by a public authority, but only under the circumstances described within the rights themselves.

When a public authority, including the police, is considering whether to interfere with qualified right, they should consider whether there is a legal basis for the interference (legality), whether the interference is proportionate, whether it is necessary to achieve the legitimate aim (set out in the article) and whether the action is accountable.

The mnemonic below will help you PLAN your actions and keep you within the Convention rights. It should be considered with any action taken as a police officer and certainly as part of any pre-planned operation.

- P – Proportionality
- L – Legality
- A – Accountability
- N – Necessity

**Proportionality**

Proportionality applies not only to Qualified Rights, it applies to any Convention right where a restriction is allowed.

So far we have seen that any permissible restrictions on Convention rights must have a basis in law and in the case of a Qualified Right can only be for one of the legitimate aims set out in the Article itself.

When a situation arises where a public authority finds it necessary to interfere with a person’s Convention Rights, there is always a range of actions that can be taken, ranging from minimal to extreme.

Of the options available, any restriction must be proportionate to the lawful aim being pursued. Another way of explaining the principle involved is to ask “Is there a less restrictive alternative?” This is the principle of proportionality.

This means that even though there may be a power to make an immediate arrest, this may not be proportionate to the threat or problem which is to be prevented. Simple verbal advice may be all that is necessary if it achieves the aim required of stopping the behaviour.
By means of the principle of proportionality, the Convention is seeking to achieve a fair balance between the conflicting rights of the community and those of the individual. In order to justify this requirement, it must be shown that:

- What is proposed is not arbitrary or unfair
- The restriction is strictly limited to what is required to achieve the objective
- The severity of the effect of the restriction does not outweigh the benefit to the community that is being sought by the restriction

**Legality**

If contemplating any potential infringement, the first question you need to ask is “Is the interference or restriction prescribed by law or in accordance with the law?” Decisions by the ECHR have consistently shown that any authority for infringement must have a basis in domestic law which is:

- Identified and established
- Accessible by being written down and available, and
- Clear enough so that its consequences can be foreseen

Complaints about rights being interfered with may be based on the argument that the terms of domestic law are too vague to know what actions constitute a breach. If the domestic law is clearly laid down, as is the case with most primary legislation, any such complaint is likely to fail. Each case is decided on its merits, the general rule being that absolute certainty is not required; reasonable certainty is enough.

**Accountability**

In reality the European Court of Human Rights looks at the three principles of legality, necessity and proportionality in the following order:

- Is the measure lawful – in other words, is it permitted by clear and accessible law?
- If so, is there a good reason for it – is it ‘in the interests of…?’
- If so, is it necessary and proportionate?

In addition, the court would also consider whether the measure was non-discriminatory.

Recording your decisions, the options considered and the reasons for decisions will further provide protection from claims that Convention rights have been unjustifiably interfered with.
Necessity (or relevance)

Articles 8-11 (The Qualified Rights) require that any interference must be necessary in a democratic society. The usual approach to deciding if an interference is necessary in a democratic society is to apply a three-fold test:

- Is there a pressing social need for the state to infringe the Convention right?
- Is the interference proportionate to the legitimate aim pursued?
- Are the reasons for the interference given by the state relevant and sufficient?

Positive/negative obligation

This principle stems from the legal obligation for public authorities to act compatibly with the Convention in Section 6 of the Human Rights Act 1998. The term ‘legal obligation’ includes both a negative obligation and a positive obligation.

- A negative obligation requires a public authority to refrain from interference with particular rights, for example not to torture and not to make an unjustified interference with the right to respect to private and family life.

- A positive obligation requires a public authority to take action to secure human rights, for example it must protect the right to life and guarantee rights between individuals.

Below is a case that illustrated this point:
Example:

Osman v UK (2000) 29 EHRR 245. This case involved an allegation that the police failed to take adequate steps to prevent a teacher, who was infatuated with an individual, attacking that individual and killing his father. Although the court found no breach of Article 2 (Right to life) or Article 8 (Right to Respect for Private and Family Life) it established some important principles:

- The state’s obligation extends beyond law provisions and law enforcement
- The state, under well-defined circumstances, has a positive obligation to take preventative measures to protect an individual who is at risk from the criminal activities of others
- The obligation must not be interpreted so that it places a disproportionate burden on the authorities
- It must be shown that the authorities did all that could be reasonably expected of them to avoid a ‘real and immediate’ risk to the life of an identified individual which they knew about or ought to have known about

1.12 Performance, Conduct and Standards of Professional Behaviour

The content in this section does not necessarily apply to PCSOs as they are not governed by The Police (Conduct) Regulations 2012 or The Police (Performance) Regulations 2012. It is left to the discretion of the Chief Officer of each force to determine whether or not the standards and disciplinary procedures should be adopted by PCSOs. Even on that basis it is suggested that PCSOs will find having general knowledge of the subject area useful.

It is further recommended that, after reading these notes, you do the e-learning package “Performance, Conduct and Standards of Professional Behaviour for Non-Managers” available on the MLE via Digital Services which will assist in putting the whole topic into context for you.

Conduct

The Police (Conduct) Regulations 2012 outline the necessary procedures for dealing with misconduct. They apply to all Police Constables and Special Constables.
The misconduct procedures underpin the Standards of Professional Behaviour and aim to provide a fair, open and proportionate method of dealing with alleged misconduct. The procedures are intended to encourage a culture of learning and development for individuals and/or the organisation. Disciplinary action has a part, when circumstances require this, but improvement will always be an integral dimension of any outcome (even in the case where an individual has been dismissed there can be learning opportunities for the police service).

The police misconduct procedures are designed to reflect what is considered to be best practice in other fields of employment while recognising that police officers have a special status as holders of the Office of Constable. The police service is committed to ensuring that the procedure is applied fairly to everyone.

**Note:** Separate procedures exist for complaints, recordable conduct matters and conduct resulting in death or serious injury (known as DSI matters). The Police Reform Act 2002 and the Police (Complaints and Misconduct) Regulations 2012 set out how complaints, conduct matters and DSI matters must be handled. They also set out the matters that are required to be referred to the Independent Police Complaints Commission (IPCC). All other cases are dealt with solely under the Police (Conduct) Regulations 2012.

The regulations are complex, but the following content provides a brief overview of the procedures and associated stages.

**Severity Assessment**

The aim of the assessment is to decide whether, if proven or admitted, the allegation would amount to misconduct or gross misconduct. For the purpose of the assessment, ‘misconduct’ is defined as a breach of the Standards of Professional Behaviour and ‘gross misconduct’ means a breach of the Standards of Professional Behaviour so serious that dismissal would be justified.

- **Misconduct** – where it is determined that the conduct, if proved, would constitute misconduct, it must further be determined whether it is necessary for the matter to be investigated or whether management action is the appropriate and proportionate response to the allegation.

- **Gross Misconduct** – Where it is determined that the conduct if proved, would constitute gross misconduct then the matter will be investigated (unless the assessment is subsequently changed to a misconduct in which case, if appropriate, no further investigation may be required).
• **Neither** – if neither applies then the appropriate authority may take no further action, take management action or refer the matter to be dealt with under Performance Regulations.

**Investigation**

The purpose of the investigation is to:

- Gather evidence to establish the facts and circumstances of the alleged misconduct
- Assist the appropriate authority to establish on the balance of probabilities, based on the evidence and taking into account all of the circumstances, whether there is a case to answer in respect of either misconduct or gross misconduct or that there is no case to answer
- Identify any learning for the individual or the organisation

**Proceedings**

There are two types of misconduct proceedings:

- **Misconduct Meeting** – for cases where there is a case to answer in respect of misconduct and where the maximum outcome would be a final written warning
- **Misconduct Hearing** – for cases where there is a case to answer in respect of gross misconduct or where the police officer has a live final written warning and there is a case to answer in respect of a further act of misconduct. The maximum outcome at this hearing would be dismissal from the police service without notice.

From 1 May 2015, misconduct hearings for police officers have been held in public. There are limited circumstances where all, or part, of a hearing may be in private. From 1 January 2016 misconduct hearings will be chaired by independent legally qualified individuals.

It is important that misconduct hearings are only used for those matters where the police officer has a live final written warning and has potentially committed a **further** act of misconduct that warrants misconduct proceedings, or that the misconduct alleged is so serious that it is genuinely considered that, if proven or admitted, dismissal from the police service would be justified.

**Fast Track Procedures**

The special case procedures can only be used if the appropriate authority certifies the case as a special case, having determined that the ‘special conditions’ are satisfied or if the IPCC has given a direction to do so. The ‘special conditions’ are that:

- **Neither** – if neither applies then the appropriate authority may take no further action, take management action or refer the matter to be dealt with under Performance Regulations.

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- Gather evidence to establish the facts and circumstances of the alleged misconduct
- Assist the appropriate authority to establish on the balance of probabilities, based on the evidence and taking into account all of the circumstances, whether there is a case to answer in respect of either misconduct or gross misconduct or that there is no case to answer
- Identify any learning for the individual or the organisation

**Proceedings**

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**Fast Track Procedures**

The special case procedures can only be used if the appropriate authority certifies the case as a special case, having determined that the ‘special conditions’ are satisfied or if the IPCC has given a direction to do so. The ‘special conditions’ are that:
• There is sufficient evidence, in the form of written statements or other documents, without the need for further evidence, whether written or oral, to establish on the balance of probabilities, that the conduct of the police officer concerned constitutes gross misconduct; and

• It is in the public interest for the police officer concerned to cease to be a police officer without delay

These procedures are therefore designed to deal with cases where the evidence is incontrovertible in the form of statements, documents or other material (e.g. CCTV) and is therefore sufficient without further evidence to prove gross misconduct and it is in the public interest, if the case is found or admitted, for the police officer to cease to be a member of the police service forthwith.

Outcomes

The possible outcomes of the meeting/hearing or Fast Track Hearing for police officers are as follows:

<table>
<thead>
<tr>
<th>Meeting/Hearing</th>
<th>Fast Track Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management advice</td>
<td>Dismissal of the case</td>
</tr>
<tr>
<td>Written warning</td>
<td>Return of the case to be dealt with at a misconduct meeting or hearing</td>
</tr>
<tr>
<td>Final written warning</td>
<td>Dismissal without notice</td>
</tr>
<tr>
<td>Dismissal with notice</td>
<td>Final written warning</td>
</tr>
<tr>
<td>Dismissal without notice</td>
<td>Extension of a final written warning</td>
</tr>
</tbody>
</table>

Appeals/Police Appeals Tribunals

A police officer has a right of appeal against the finding and/or the outcome imposed at a misconduct meeting. Where a police officer has appeared before a misconduct hearing then any appeal against the finding or outcome is to the Police Appeals Tribunal. An appeal should be made to the Police Appeals Tribunal.
1.13 Performance/Attendance

The Police (Performance) Regulations 2012 exist to deal with issues of individual unsatisfactory performance, attendance or capability. They are designed to deal with officers whose work performance rather than their conduct is unsatisfactory and therefore the emphasis is on improving the standard of an officer’s work rather than delivering punishment.

The procedures apply to police officers up to and including the rank of chief superintendent, and special constables. They do not apply to student police officers during their probationary period, as regulation 13 of the Police Regulations 2003 applies.

The definition of unsatisfactory performance (or attendance) is given in Regulation 4 of the Police (Performance) Regulations 2012:

“An inability or failure of a police officer to perform the duties of the role or rank he or she is currently undertaking to a satisfactory standard or level.”

The core responsibilities, activities and behaviours expected of the officer must be in accordance with their role profile and the Standards of Professional Behaviour. It is against those core responsibilities, activities and behaviours that performance should be assessed. Managers should let an officer know when they are doing well or, if the circumstances arise, when there are the first signs that there is a need for improvement in their performance or attendance. Occasional minor lapses below acceptable standards may be dealt with in the course of normal management activity. Ideally, as a result of management action, performance or attendance will improve and continue at an acceptable level, in which case no further action will need to be taken.

If there is no improvement, insufficient improvement or the improvement is not sustained over a reasonable period of time (preferably agreed between the line manager and the officer) it will then be appropriate to start the unsatisfactory performance procedures. There are potentially three stages to the procedures, each of which involves a different meeting composition and possible outcomes. If the outcome of a first stage meeting is an improvement notice, and the officer fails to respond, he or she can be required to attend a second stage meeting, where a final written improvement notice may be issued. A further failure to improve may see the officer at a third stage meeting, where redeployment, reduction in rank and dismissal are on the table as sanctions. In cases of gross incompetence, an officer may be called directly to a third stage meeting, bypassing stages one and two.
1.14 Complaint Cases

The Police Reform Act 2002 and the Independent Police Complaints Commission’s statutory guidance describe how complaints by members of the public are to be dealt with.

Section 12 of the Police Reform Act 2002 defines a complaint as:

“Any complaint about the conduct of a person serving with the police which is made (whether in writing or otherwise) by:

a. A member of the public who claims to be the person in relation to whom the conduct took place
b. A member of the public not falling within paragraph a) who claims to have been adversely affected by the conduct
c. A member of the public who claims to have witnessed the conduct
d. A person acting on behalf of a person falling within any of paragraphs a. to c.”

A complaint about conduct may be dealt with by:

- **Local resolution** – an alternative solution to investigations for low level complaints. The Police Reform Act 2002, the Police (Complaints and Misconduct) Regulations 2012 and the IPCC statutory guidance sets out when matters are suitable for local resolution.

- **An official investigation** – by the home or outside force, sometimes under the supervision or management of the IPCC, or by the IPCC’s own investigators.

Alongside the complaint being investigated, the underlying conduct of the officer should be considered under the misconduct procedures whether or not it occurred on or off duty.

An investigation into a complaint is not automatically an investigation into whether a police officer or a special constable has breached the Standards of Professional Behaviour but rather an investigation into the circumstances that led to the dissatisfaction being expressed by the complainant of the actions of one or more persons serving with the police.

The investigation into the complaint must be proportionate having regard to the nature of the allegation and any likely outcome. It may result in the case being discontinued, resolved through local resolution or:

- Management action being taken, such as addressing any underlying causes of misconduct and/or identifying expectations for future conduct

- A misconduct meeting being held
- A misconduct hearing being held
- A special case fast track hearing.

Note: In relation to police officers, if misconduct is not relevant but poor performance is identified, action can be initiated using the Unsatisfactory Performance Procedures.

1.15 Independent Police Complaints Commission

The Independent Police Complaints Commission (IPCC) is an independent body set up to supervise the investigation of complaints against the police. Its role has become increasingly important in ensuring the thorough and impartial investigation and supervision of sensitive and serious matters involving police conduct. Certain complaints made against police officers must be referred to the IPCC. As already stated above (in DSI matters) this involves cases where it is alleged that the activity of the police led to the death of, or serious injury to, some other person. The IPCC Statutory Guidance 2013 states that the following must be referred to the IPCC:

- Serious assault
- Serious sexual offence
- Serious corruption
- Criminal offence or behaviour which is liable to lead to misconduct proceedings and which, in either case, is aggravated by discriminatory behaviour on the grounds of a person’s race, sex, religion or other status identified in paragraph 8.18 of this guidance
- A relevant offence, or
- Complaints or conduct matters which are alleged to have arisen from the same incident as anything falling within these criteria.

More information on the IPCC can be found on their website.

1.16 Police and Crime Commissioners

Police and Crime Commissioners (PCCs) are elected by the public and are responsible for ensuring efficient and effective policing in England and Wales. They are the frontline of the Government’s crime and policing reforms and are part of a programme of work to decentralise control and put the public in the driving seat. PCCs work with the public, police and local partners to ensure effective policing, as well as contributing to national requirements.
The table below summarises the role of PCCs.

| Setting the strategic direction and accountability for policing | • Being accountable to the electorate  
• Setting strategic policing priorities  
• Holding the force to account through the Chief Constable, and consulting and involving the public |
| Working with partners to prevent and tackle crime and re-offending | • Ensuring the police respond effectively to public concerns and threats to public safety  
• Promoting and enabling joined up working on community safety and criminal justice  
• Increasing public confidence on how crime is cut and policing is delivered |
| Invoking the voice of the public, the vulnerable and victims | • Ensuring that public priorities are acted upon, victims are consulted and the most vulnerable are not overlooked  
• Complying with the General Equality Duty under the Equality Act 2012 |
| Contributing to resourcing of policing response to regional and national threats | • Ensuring an effective policing contribution, alongside other partners to national arrangements, in order to protect the public from cross boundary threats in line with the Strategic Policing Requirement |
| Ensuring value for money | • Responsible for the distribution of policing grants from central government and setting the precept raised through council tax  
• Responsible for setting the budget, including the police precept component |
As well as PCCs having a responsibility to ensure value for money, under Section 35 of the Police Reform and Social Responsibility Act 2011 Chief Officers must do likewise and ensure that the people under their direction and control also do it in exercising their functions, i.e. all police officers and police staff.

### 1.17 Summary

In these student notes we have looked at the ways in which you must use your ethics, morals, integrity, knowledge, skills and attitudes to be or become better professionals. We have explored some examples covering decision-making and looked at discipline, conduct and performance.

With practice, feedback and reflection you should be better equipped to make ethical decisions that yield the best outcomes, whilst causing the least harm in the service of the public.
1.18 Revision questions

- What is policing by consent?
- What does the Code of Ethics seek to achieve?
- How does the National Decision Model help to underpin the Code?
- What should you consider when making decisions?
- What is the role of the IPCC?
- What is the role and purpose of Police and Crime Commissioners?
- To what extent does the Human Rights Act 1998 impact on your responsibilities as a police officer?
2. Key Legislation

- Crime and Disorder Act 1998
- Criminal Law Act 1967
- Data Protection Act 1998
- Equality Act 2010
- Human Rights Act 2000
- Police Act 1996
- Police and Criminal Evidence Act 1984
- Police (Complaints and Misconduct) Regulations 2012
- Police (Conduct) Regulations 2012
- Police (Performance Regulations) 2012
- Police Reform Act 2002
- Police Reform and Social Responsibility Act 2011
- Police Regulations 2003

3. E-learning

In addition to this book the following e-learning is available via the College of Policing Managed Learning Environment (MLE):

- National Decision Model for Policing

The MLE is regularly updated with new learning programmes and materials.