

Response ID ANON-DXUE-JYM1-Q

Submitted to Police complaints, investigations and misconduct: a consultation on legislation
Submitted on 2022-08-16 12:05:41

Code of ethics

1.1A Do you agree that there should be a statutory requirement for Police Scotland to have a Code of Ethics?

Yes

1.1B Please explain your answer using the free text box below

Free Text Box:

The SWRC strongly agree with the recommendation made by Dame Elish Angiolini that there should be a statutory requirement for Police Scotland to adopt a statutory code of ethics. We see that this would strengthen the existing code of ethics and centre the principles of this at the heart of police duties and ethos. The existing code does not have this requirement in law and making it a statutory necessity would serve to place the importance of ethics in the culture, practice and policy of Police Scotland.

We note that there is a lack of reference to any code of ethics in the founding legislation of Police Scotland and see that steps should be taken to address this, again this would show the importance of the principles. For an organisation such as Police Scotland, which carries out duties of high importance within Scotland, their code of ethics should be given due consideration and scrutiny.

We believe that this would help towards increasing public trust in the police. We note that recent statistical analysis from the 'Your Police Survey' from the time period 2021/22 showed that 'confidence' in Police Scotland stood at an average of 48%, we would disagree with the analysis that this demonstrates that confidence in the police is 'generally strong' in Scotland. This constitutes less than half of the population that they seek to police which significantly undermines the ability of Police Scotland to operate a policing by consent approach as is its aim. We also note that this analysis fails to take any sort of intersectional approach and thereby does not give accurate data as to which sections of the population tend to feel higher or lower levels of confidence in the police. As pointed out in the recent project by Police Scotland entitled 'Inquiring Together: Collaborative Research with BAME Communities and Serving Officers' –

'It has been widely recognised peoples from seldom heard communities have suffered negative experiences with the police in their native countries, and here in Scotland, which affects trust and confidence in Police Scotland. Many people who are refugees, migrants and people from black and minority ethnic backgrounds live in areas high in the Scottish Index of Multiple Deprivation (SIMD). Language and communication barriers, a feeling of uncertainty regarding their immigration status and a fear of racism often deters members of seldom heard communities contacting police and/or engaging with police officers when needed.'

At SWRC we support women with experiences of gender-based violence and specialise in advocating for women who have challenges in obtaining justice. Many of these women have negative experiences from dealing with Police Scotland during the reporting and investigation of crimes against them. We are aware of particularly low levels of confidence from many women in this regard.

We are supportive of particular efforts being made to strengthen the confidence that these groups have in the police and feel that a statutory Code of Ethics would go some way to achieving this.

We submit that an alternate body from Police Scotland should be responsible for the creation, publication and maintenance of a code and there should be an ability for Parliament to scrutinise this. This independence and accountability would serve to further increase confidence in the function of the Code and legitimise it.

1.1C Should it be possible to amend and/or update any statutory Code of Ethics when required?

Yes

1.1D If Police Scotland is required by law to have a Code of Ethics, who should be responsible for preparing that Code of Ethics?

Other (please specify)

Other (please specify):

1.1E If Police Scotland is required by law to have a Code of Ethics, should whoever is responsible for it's preparation (as per question 1.1D above) be required to consult on it?

Yes

Please specify how the responsible party should consult. :

An open consultation process should be adopted to allow stakeholders, members of the public or other interested parties (including Police Scotland) to provide input into its constitution, comment on recommendations and raise any concerns.

1.1F If there were a requirement for a Code of Ethics to be consulted upon who should be consulted?

Free Text Box:

- Other criminal justice agencies
- Stakeholders
- Members of the public
- Gender based violence services (including RCS and SWRC)
- Academics with relevant specialism
- Police staff and former police staff (including survivors of GBV who have resigned due to sexual harassment or other GBV occurring in their work place)
- People with lived experience of policing

1.1G If Police Scotland is required by law to have a Code of Ethics, should the body (or bodies) responsible for its preparation (as per question 1.1D above) be responsible for publishing that Code of Ethics?

Yes

1.1H Do you have any further comments you wish to make in relation to a Code of Ethics?

Further Comments.:

Duty of candour and co-operation

1.2A To what extent do you agree or disagree that there should be an explicit statutory duty of candour on the police to co-operate fully with all investigations into allegations against its officers?

Strongly agree

1.2B If an explicit statutory duty of candour is to be placed on the police, should this be on the police as an organisation or on individual officers?

Both Police Scotland as an organisation and individual officers

1.2C If an explicit statutory duty of candour is to be placed on the police (either as an organisation or on individual officers), should this relate specifically to incidents involving on duty officers only?

No

1.2D If an explicit statutory duty of candour is to be placed on individual police officers, should that duty only apply when an officer's status as a witness has been confirmed?

No

1.2E Should police officers have a statutory duty of co-operation to assist during investigations, inquiries and formal proceedings?

Yes

1.2F If a statutory duty of co-operation should apply to police officers as per question 1.2E, should this also apply to former officers?

Yes

1.2G If a statutory duty of co-operation should apply to police officers as per question 1.2E, should this also apply to police staff (or former police staff)?

Yes, for both police staff and former police staff

1.2H Do you think any of the following should be required if officers have a statutory duty to co-operate during investigations, inquiries and formal proceedings? Please select all options that apply.

Yes, officers should be required to participate openly, Yes, officers should be required to participate promptly

Other (please specify):

1.2I If a statutory duty of co-operation is to be placed on the police, should that duty relate specifically to incidents involving on duty officers only?

No

1.2J Should the Police Investigations and Review Commissioner (PIRC) have a statutory power, where it is necessary and proportionate, to compel police officers to attend within a reasonable timescale for interview?

Yes

1.2K If the Police Investigations and Review Commissioner (PIRC) is to be provided with a power to compel police officers to attend within a reasonable timescale for interview, how should a reasonable timescale for interview be determined?

Timescales to be set in legislation

Other (please specify):

1.2L In light of questions 1.2A-1.2K above, should the Scottish Government consider possible amendments to the constable's declaration to reflect an obligation to assist with investigations, where appropriate?

Yes

1.2M In light of questions 1.2A-1.2K above, should the Scottish Government consider possible amendments to the Standards of Professional Behaviour to reflect an obligation to assist with investigations, where appropriate?

Yes

1.2N Do you have any further comments you wish to make in relation to statutory duties of candour and co-operation?

Further Comments:

We submit that police officers serving within Police Scotland are given a great deal of power in the exercise of their police functions. This in turn confers a heightened responsibility on police officers to undertake those duties in a legitimate manner and to a high standard. Public confidence in the police is reliant on police officers who do not meet these standards being properly held to account.

Where incidents occur which require to be investigated then the public should be given assurances that officers will cooperate with this process and put beyond doubt that police officers will give every assistance after a serious incident.

As such we believe that there should be a duty of candour on both serving and former police officers to cooperate fully in investigations, in an open and prompt manner. There should be an ability to compel an officer or former officer to attend a PIRC interview.

We have supported a number of survivors who have experienced crimes of domestic abuse, reportedly committed by serving police officers, and are aware that there is often a very real perception that there are failures in the investigation process and of, what has been described by professionals, as a 'locker room' approach to dealing with the charges.

In England, the Centre for Women's Justice have brought a 'Super Complaint' against the police which specifically relates to the investigations of crimes of domestic violence committed by police officers. They report that; 'At the heart of the concerns is lack of integrity, of officers manipulating the system and acting in bad faith in a variety of ways.' They quote conviction rates for domestic abuse cases, where the perpetrator is a police officer, as two thirds of that of the general population.

This can serve to highlight the public perception of 'cronyism' between police officers and that they will serve to protect their own. Police officers are tasked with enforcing the law, they take an oath to uphold the law and the public need to be assured that when this appears to be the case that the police will continue to act in their interests and not that of the police force or fellow officers.

We also acknowledge that consideration of this matter brings alongside it concerns over the potential for incrimination and the right to silence. We acknowledge and support the analysis made by Dame Angiolini in the review that;

'the fundamental right of a suspect to remain silent outweighs the obligation of the state to provide an effective investigation in the event of a death at the hands of the state or in an investigation of an alleged breach of Article 3 or Article 5'

We note that where the serving or former police officer goes beyond the position of being a witness and into the territory of being a 'suspect' that they be afforded the usual protections that a person suspected of a criminal offence be entitled to by nature of that status, including the right to silence, however this should not preclude a general duty of candour for witnesses.

Whistleblowing

1.3A Should people working in Police Scotland be able to raise their concerns about wrongdoing within that organisation ("whistleblowing concerns") with an independent third-party police oversight organisation? Please select one option only.

Yes, with the PIRC

Please Specify:

1.3B Should people working in the Scottish Police Authority be able to raise their concerns about wrong doing within that organisation ("whistleblowing concerns") with an independent third-party police oversight organisation? Please select one option only.

Yes, with the PIRC

Please Specify:

1.3C Should concerns raised about wrongdoing within policing in Scotland ("whistleblowing concerns") be audited by an independent third-party police oversight organisation? Please select one option only.

Don't know

Please Specify :

1.3D Do you have any further comments you wish to make in relation to an independent third-party police oversight organisation?

Free Text Box:

We support the PIRC becoming listed in the necessary statutes as the prescribed body for whistleblowing. There should be safe and accessible channels available for whistleblowing to occur and awareness raised, through training, within the police about the methods for doing this.

Definition of "Person serving with the police" and "Member of the public"

1.6A Should the term "Person serving with the police" be more clearly defined?

Yes

1.6B Should the definition include clarity on PIRC powers to investigate the following people? Please select all options that apply.

Officers who have since retired from the service, Officers who have since resigned from the service, Officers who were off duty at the time of the incident ("act or omission")

Other (Please Specify):

1.6C Do you have any further comments you wish to make in relation to clarifying the definition of "Person serving with the police"?

Further Comments.:

We note that this is an area where there is a lack of clarity and that former or off duty officers require to be included within the definition of 'person serving with the police'. The responsibility conferred in the undertaking of the position of Police Officer comes with its professional standards of conduct and ethics which mean that police officers must adhere to and be seen to adhere to them generally throughout their life. There should be standards that mean that, to a certain extent that even when off duty they uphold basic principles of ethics, for example being law abiding.

We are also aware of circumstances whereby police officers under investigation for misconduct behaviour have been able to resign from the police meaning that they are no longer subject to that investigation.

1.6D Should the term "Member of the public" be more clearly defined, to make clear who may make a relevant complaint?

Yes

1.6E If "Member of the public" is to be defined, should any definition make clear that it includes a serving police officer who is off duty at the time of the incident?

Yes

1.6 F Do you have any further comments you wish in relation to defining a "Member of the public"?

Free Text Box:

These roles can coexist and be interchangeable depending on the circumstances of the investigation. An off duty police officer could be both a 'member of the public' and a 'serving police officer' just like a serving police officer could both be 'on duty' and a 'victim' of a crime. It will largely be dependent on the circumstances.

Changes to Police Investigations and Review Commissioner (PIRC) structure

2.1A Should the PIRC should be re-designated as a Commission?

Yes

2.1B If PIRC is re-designated as a Commission, do you agree that two deputy Commissioners should be appointed?

Yes

2.1C Please explain your answers using the free text box

Free Text Box:

We support the recommendations of Dame Angiolini in the review and that overall the current structure of the PIRC requires to be strengthened and enhanced. The body which investigates and reviews the functions of the police requires to have the necessary powers and independence to allow this to be undertaken in a meaningful way. The current situation we see is that the PIRC investigations are often frustrated and fail to lead to policy changes and in part this is because it lacks the necessary status and power to allow it to carry out its statutory functions.

2.1D If Deputy Commissioners are to be appointed, should they be required to have any particular expertise? For example, should a Deputy be required to have legal knowledge?

Free Text Box:

We believe that deputy officers should have an element of legal knowledge and of police processes in order for them to effectively carry out their role.

We also see that experience in working with victims of crime and having a trauma informed approach would serve to enhance their ability to work with these groups.

2.1E If Deputy Commissioners are to be appointed, should any categories of person be precluded from being appointable? For example, do you think former senior police officers should be able to apply?

Free Text Box:

As is recommended by Dame Angiolini, we support that the Deputy Commissioners be individuals who have not served as senior police officers. This will ensure the public of their independence.

2.1F If Deputy Commissioners are to be appointed, who in your view should be responsible for appointing them?

Free Text Box:

As Dame Angiolini suggests this could be done on recommendation from the Scottish Parliament rather than the Scottish Ministers which would involve a fairer and more democratic process. The length of service should be considered and be for a reasonable fixed term, with the opportunity to review appointments where appropriate

2.1G Do you agree that a statutory Board should be created?

Yes

2.1H Please explain your answer using the free text box

Free Text Box:

Having a board would provide further levels of accountability. The board would be able to provide a degree of further expertise, review the functions of the commission and provide direction and support.

2.1I How do you think that the Police Investigations and Review Commissioner (PIRC) should be appointed? Please select one option only.

Or the appointment be made on nomination of the Scottish Parliament

2.1J Please explain your answer using the free text box

Free Text Box:

Providing a recommendation through the Scottish Parliament means that democratic parties can collaborate to recommend a suitable appointment and that this is not made by Scottish ministers alone.

2.1K Do you agree that PIRC should be appointed by Her Majesty the Queen?

Yes

2.1L Please explain your answer using the free text box

Free Text Box:

We understand this is the usual formal procedure for these types of appointment.

2.1M Where do you think that accountability arrangements for PIRC should sit? Please select one option only.

Transfer to the Scottish Parliament

2.1N Please explain your answer to using the free text box

Free Text Box:

The accountability should transfer to the Parliament so they can be called upon by Parliamentary committees when appropriate.

Increased powers for the Police Investigations and Review Commissioner (PIRC)

2.2A Should PIRC be able to access the Police Scotland complaints and conduct database remotely?

Yes

2.2B Please explain your answer using the free text box

Free Text Box:

We are strongly in support of the PIRC having access to the complaints and conduct database in order to facilitate the timeous and accurate process of their investigatory processes.

A common theme in the feedback we obtain from survivors who have been involved in PIRC processes is, the lengthy time that investigations take. We understand that the PIRC are dependent on Police Scotland to facilitate their access to the database. Police Scotland and PIRC have both experienced significant delays which have been attributed to staffing issues and service delivery pressures. Should PIRC have access to the database, this would reduce time needed for complaints to be examined. The current arrangements require more time to organise visits, space which was particularly demanding during the pandemic. Having easy access to the database would not only speed up processes but may also be useful for audit and practice concerns.

2.2C If PIRC is to have access to Police Scotland's complaints and conduct database, are there any safeguards or limits which should be put in place? Please provide details using the free text box below.

Free Text Box.:

We do not believe that there should be any restriction on what the PIRC are able to access from the system but we do believe that there should be limitations on who can access the database within that organisation. PIRC staff should be limited to accessing information which is directly relevant to investigations they are carrying out. This should involve some sort of system which can track usage or an audit process to ensure that there is no abuse of the access rights.

PIRC should have access to any information they need for the complaint but it would also be of assistance for them to access for the purposes of recording and monitoring trends and informing policy making.

All this should be in line with UK data protection legislation and regulations.

2.2D Do you have any further comments you wish to make in relation to PIRC being given access to the complaints and conduct database?

Free text Box:

2.2E Do you agree that the PIRC requires this additional power to call in an investigation of a complaint?

Yes

2.2F Should the PIRC be able to investigate a complaint against Police Scotland in certain circumstances? Please select all options that apply.

Yes, if there is sufficient evidence that Police Scotland has not dealt with a complaint properly, Yes, if the complainer provides compelling evidence of a failure on the part of Police Scotland, Yes, if the Commissioner assesses that it would be in the public interest to carry out an independent re-investigation

Yes, other (please specify):

2.2G Do you have any further comments you wish to make in relation to the possibility of the PIRC being able to investigate complaints against Police Scotland?

Free Text Box:

Survivors who contributed to our call for evidence in 2020 had advised that "When making a complaint to Police Scotland, survivors advise that they do not always feel that the response is robust or fair and they question the ability of Police Scotland to be objective and unbiased." Having another avenue to raise legitimate concerns would be beneficial to public trust and transparency.

PIRC currently only focus on how a complaint was handled, which means that there is no mechanism for further review of a complaint. Providing this would be beneficial to the public, especially when they are concerned about lack of Police oversight in complaints processes.

As stated by Dame Angiolini; 'it should be easy to complain, easy to get a response and easy to learn the lessons.' Allowing the PIRC to intervene in police complaints where these standards have not been met will facilitate that process.

2.2H Noting HMICS' role, should the PIRC be able to investigate a current practice of Police Scotland if the Commissioner believes it would be in the public interest?

Yes

2.2I Noting HMICS' role, should the PIRC be able to investigate a current policy of Police Scotland if the Commissioner believes it would be in the public interest?

Yes

2.2J If the PIRC is to be given a new power enabling them to investigate current practices or policies of Police Scotland, should the power to investigate be restricted or limited in any way?

No

2.2K Do you have any further comments in relation to Questions 2.2A-2.2H on increased investigative and audit powers for PIRC?

Free Text Box:

We see that there are important roles that both the PIRC and HMICS could play if they were able to collaborate and work to review police practices and policies and make recommendations for change.

Feedback from survivors involved in these processes tells us that when things have gone wrong with the police they want to see real recognition of this through changes to policy and practice. At present we do not often see that happening and see that increased powers of PIRC could assist this function.

2.2L Should recommendations from the PIRC be put on a statutory footing similar to current reconsideration directions following a review and/or audit of police complaints handling?

Don't know

2.2M Following a complaint handling review or audit of complaint handling reviews, should Police Scotland or other policing bodies be required to act on those recommendations if it is in the public interest?

Yes, with no restrictions

Please specify:

2.2N Should Police Scotland have to respond to recommendations made by the PIRC following a review of police complaints handling?

Yes

2.2O Should Police Scotland have to respond to recommendations made by the PIRC following an audit of police complaints handling?

Yes

2.2P Do you have any further comments you wish to make in relation to the PIRC making recommendations following a complaint handling review or audit of police complaints handling; or in relation to Police Scotland or other policing bodies acting on any such recommendations?

Free Text Box:

They should respond so that complainers have closure and an understanding of what steps have been taken to resolve their complaint.

Cross-jurisdictional issues

2.3A If you have views to share in relation to cross-jurisdiction investigations, please outline them in the free text box below.

Free Text Box:

We are aware from practice that often any cross-jurisdictional issues cause significant delays for victim/survivors. We would submit that any changes to be made to how PIRC operates in terms of cross-jurisdictional issues should take into account the impact of trauma on victim/survivors of gender based violence and that any processes should be as efficient as possible whilst avoiding the victim/survivor having to recount their experience to multiple agencies.

Gross misconduct proceedings to be held in public

3.1A Should police officer gross misconduct hearings be held in public?

Don't know

3.1B Please explain your answer using the free text box below

Free Text Box:

We highlight that when considering the interests of survivors we often hear that they would be served by being able to witness the proceedings and understand what has been said about matters which affect them

3.1C If gross misconduct hearings are to be held in public, should these hearings be for officers of all ranks who are being investigated for gross misconduct, or senior officers only?

Don't know

3.1D If gross misconduct hearings are to be heard in public, should the Chair of a hearing have discretion to restrict attendance as they see appropriate?

Don't know

3.1E If you answered "Yes" to Question 3.3D, under which circumstances should attendance be restricted?

Free Text Box:

3.1FF Do you have any further comments you wish to make in relation to questions misconduct and gross misconduct proceedings?

Free Text Box:

Protection of vulnerable witnesses

3.1F To what extent do you agree or disagree that in addition to the existing protections for witnesses, the Chair of the gross misconduct hearing should consider whether the evidence of any vulnerable witnesses should be heard in private to ensure the protection of such vulnerable witnesses (this may include the officer who is the subject of the proceedings)?

Strongly agree

3.1G In addition to the existing protections for witnesses, to what extent do you agree or disagree that the Chair of the gross misconduct hearing should be obliged to consider any other reasonable adjustments that they believe to be necessary to ensure the protection of such vulnerable witnesses (this may include the officer who is the subject of the proceedings)?

Strongly agree

3.1H If you agree the Chair of gross misconduct hearings should be obliged to consider other reasonable adjustments to ensure protection of vulnerable witnesses, what reasonable adjustments should be considered? Please provide details using the free text box below.

Free Text Box:

We submit that the support and protections for vulnerable witnesses in misconduct hearings should be brought in line with those available in the criminal court processes in that they should be allowed the use of special measures to facilitate them giving their best evidence. If the survivor is given their evidence in connection with her experiences of gender-based violence then she should be deemed vulnerable by nature of those experiences and provided with the options of screens, supporter (of choice) and video link evidence is appropriate.

Additionally, survivors should have access to support services and advocacy services and provided with clear and accessible information so that the witness can understand the processes

3.1EE Do you have any further comments you wish to make in relation to questions regarding misconduct and gross misconduct proceedings?

Free Text Box:

Gross misconduct hearing outcomes to be made public

3.1I To what extent do you agree or disagree the outcome of gross misconduct proceedings should be made public?

Strongly agree

3.1J If you do not agree that the outcome of gross misconduct hearings should be made public, is there more that Police Scotland (for non-senior officers) or the relevant body responsible in future for holding misconduct hearings for senior officers, can do within current practices to increase transparency around gross misconduct proceedings?

Free Text Box:

3.1K To what extent do you agree or disagree that an illustrative, publicly available list of matters likely to be considered by a gross misconduct hearing would be useful?

Not Answered

3.1L If a publicly available list of matters to be considered by a gross misconduct hearing were to be available who should be responsible for its publication?

Free Text Box:

3.1M If a publicly available list of matters to be considered by a gross misconduct hearing were to be available, should a finding of gross misconduct always result in dismissal, unless there are exceptional circumstances to justify an alternative sanction?

Don't know

3.1N If the outcome of gross misconduct proceedings is to be made public, should the Chair's report, subject to any necessary redactions, be published by the Scottish Police Authority on its website?

Don't know

3.1O If the Chair's report is to be published by the Scottish Police Authority on its website as per question 3.1N, what type of details, if any, should be redacted? Please provide details using the free text box below.

Free Text Box:

3.1P If the outcome of gross misconduct hearings is to be published by the Scottish Police Authority on its website, how long should the report be available online?

Don't know

Please specify:

3.1Q Dame Elish highlighted a number of areas where amendments to the conduct regulations should be considered or regulations could be clarified. Do you agree that these further recommendations should be considered as policy is further developed?

Yes

3.1R If you have any further views to share in relation to changes to the regulations that should be considered as part of this work, please outline them in the text box below.

Free Text Box:

3.1EE Do you have any further comments you wish to make in relation to questions regarding misconduct and gross misconduct proceedings?

Free Text Box:

Composition of gross misconduct hearing panels

3.1S From which category of person should the appointment of the Chair of any misconduct hearing which is considering allegations against senior officers, be made? Please select one option only.

An independent legally qualified person

Please specify:

3.1T In addition to an appointed Chair (as per question 3.1S above), should any misconduct hearing which is considering allegations against senior officers include members made up of any of the following categories of person? Please select all options that apply.

An independent lay person, An HR professional

Please specify:

3.1U Please explain your answers to questions 3.1ST-3.1T using the free text box below.

Free Text Box:

We agree with the recommendations of the Dame Angiolini review.

3.1V From which category of person should the appointment of the Chair of any gross misconduct hearing which is considering allegations against an officer of the rank of Chief Superintendent, be made? Please select one option only.

An independent legally qualified person

Please Specify:

3.1W In addition to an appointed Chair, should any gross misconduct hearing which is considering allegations against an officer of the rank of Chief Superintendent include members made up of any of the following categories of person? Please select all options that apply.

An independent lay person, An HR professional

Please specify:

3.1X Please explain your answers to questions 3.1V-W above using the free text box below.

Free Text Box:

3.1Y From which category of person should the appointment of the Chair of any gross misconduct hearing which is considering allegations against non-senior officers below the rank of Chief Superintendent be made? Please select one option only.

An independent legally qualified person

Please Specify :

3.1Z In addition to an appointed Chair (as per question 3.1Y above), should a gross misconduct hearing which is considering allegations against non-senior officers below the rank of Chief Superintendent include members made up of any of the following categories of person? Please select all options that apply.

An independent lay person, An HR professional

Please Specify:

3.1AA Please explain your answers to questions 3.1Y-Z above using the free text box below.

Free Text Box:

3.1BB Do you agree that the Lord President should appoint the Chair of a misconduct hearing which is considering allegations against officers? Please select all options that apply.

Yes, for senior officers, Yes, for Chief Superintendents, Yes, for non-senior officers below the rank of Chief Superintendent

3.1CC Do you agree that the Lord President should appoint the panel of a misconduct hearing which is considering allegations against officers? Please select all options that apply

Don't know

3.1DD Please explain your answers to questions 3.1BB-CC above using the free text box below.

Free Text Box:

3.1EE Do you have any further comments you wish to make in relation to questions regarding misconduct and gross misconduct proceedings?

Free Text Box:

Continuing of gross misconduct proceedings

3.2A Should it be possible to continue, or begin, gross misconduct proceedings against former officers? Please select one option only.

Yes, for all ranks of police officers

3.2B If it is to be possible to continue, or begin, gross misconduct proceedings against former officers, under what circumstances should this be done? Please provide details using the free text box below.

Free Text Box:

We agree with the findings of the Angiolini Review that there is strong public interest in dealing with gross misconduct even after officers leave the service. There is a wider issue of maintaining public confidence in policing and demonstrating that these proceedings have been followed and officers held accountable even when they have left the force – for example through resignation or retirement.

There is also an interest in this for survivor/ victims, especially where they have been the victim of a serving police officer. This is an access to justice issue and the findings of misconduct proceedings could provide recognition of the wrongdoing they experienced and validation of their claims.

They should also use Barred and Advisory Lists to strengthen vetting processes and prevent any police officer with a finding of gross misconduct from being appointed by another police service, force, policing body or another profession with safeguarding responsibilities. This means that an officer subject to misconduct proceedings would be unable to resign, stop the proceedings then take up post elsewhere. This list could be shared between UK countries (as is the case with England and Wales) and also between other policing bodies. This is a public protection issue to ensure that where a particular officer is of danger to the public the processes recognise this and share the information.

3.2C If it is possible to continue, or begin, gross misconduct proceedings after an officer has left the service, who should be responsible for making that decision (to continue or begin proceedings)? Please select all options that apply.

The Police Investigations and Review Commissioner (PIRC)

Please Specify:

3.2D Please explain your answer using the free text box below

Free Text Box:

3.2E In deciding whether to continue with, or begin, gross misconduct proceedings after an officer has left the service, should the relevant authority be required to take into account the wishes of a complainer?

Yes

3.2F Do you think any of the following changes to gross misconduct hearings would have altered how you answered the above questions (3.2A-E)? Please select all options that apply.

Don't know

3.2G Please explain your answer using the free text box below.

Free Text Box:

3.2H Should it be possible for gross misconduct proceedings to be taken forward where allegations came to the attention of the relevant authority (as per question 3.2.C above) more than 12 months after the person ceased to be an officer, and the following conditions are met: a) the case is serious and exceptional, b) the case is likely to damage public confidence in policing, and c) the PIRC has determined disciplinary proceedings reasonable and proportionate?

Yes

3.2I Please explain your answer to the question above.

Free Text Box:

3.2J If gross misconduct proceedings are to begin more than 12 months after a person ceased to be an officer, should these proceedings be for officers of all ranks? Please select one option only.

Yes, for all ranks of police officers

Barred and advisory lists

3.2K Should the Scottish Government work with the UK Government to adopt barred and advisory lists and other potential models?

Yes, by using the Barred and Advisory Lists model

Please Specify:

3.2L Do you have any further comments you wish to make in relation to continuation of gross misconduct proceedings?

Free Text Box:

Accelerated misconduct hearings

3.4A Should accelerated gross misconduct hearings be able to take place when the evidence is incontrovertible and can prove gross misconduct without any additional evidence being needed?

Don't know

3.4B Should accelerated gross misconduct hearings be able to take place to deal with circumstances where the subject officer admits to their behaviour being gross misconduct?

Don't know

3.4C If accelerated gross misconduct hearings are to be a possibility, in cases involving non-senior officers, who should decide what evidence is considered to be incontrovertible? Please select one option only.

Don't know

Please Specify:

3.4D If accelerated gross misconduct hearings are to be a possibility, in cases involving senior officers, who should decide what evidence is considered to be incontrovertible? Please select one option only.

Don't know

Please Specify:

3.4E What type of evidence would you expect to be considered incontrovertible? Please provide details using the free text box below.

Free Text Box:

We feel this could apply to some very limited examples as there are concerns that this could be an infringement of Article 6 rights. However, in cases where there is a previous criminal conviction then there is a strong case that the misconduct could be established without much doubt, provided the offence is of a serious enough character. From the point of view of survivors this could have the benefit of bringing these proceedings to an end sooner and also limit the amount of times they need to recount their experiences.

Where the officer admits the misconduct then that could also be a case for an accelerated procedure.

3.4F If accelerated gross misconduct hearings are to be a possibility, in cases involving non-senior officers, who should decide if expedited proceedings would be appropriate in each circumstance? Please select one option only.

Don't know

Please Specify:

3.4G If accelerated gross misconduct hearings are to be a possibility, in cases involving senior officers, who should decide if expedited proceedings would be appropriate in each circumstance? Please select one option only.

Don't know

Please Specify:

3.4H Should an investigation into allegations take place in circumstances where evidence is deemed to be incontrovertible, but the subject officer does not admit to their behaviour being gross misconduct?

Don't know

3.4I Should the Scottish Ministers consider (either in legislation or guidance) applying indicative timescales to the investigation of misconduct allegations?

Yes

3.4J Where an officer is convicted of a criminal offence which would constitute gross misconduct, should the Charing Panel or Charing Constable be able to move to dismiss that officer immediately, without separate misconduct proceedings?

Yes

Anonymous complaints

3.5D When the relevant body is deciding whether an investigation into an allegation against a senior officer or non-senior officer should be carried out, should that body take into consideration whether an allegation is made anonymously?

No, not for any police officers

3.5E When the relevant body is deciding whether an investigation into an allegation against a senior officer or non-senior officer should be carried out, should that body take into consideration whether an allegation is sufficiently specific in time and location? Please select one option only.

No, not for any police officers

3.5F When the relevant body is deciding whether an investigation into an allegation against a senior officer or non-senior officer should be undertaken, should that body take into consideration whether an allegation is malicious?

No, not for any police officers

3.5G When the relevant body is deciding whether an investigation into an allegation against a senior officer or non-senior officer should be undertaken, should that body take into consideration whether an allegation is vexatious?

No, not for any police officers

3.5H Please explain how, in your view, it can be ensured that genuine complaints are not misrepresented as "vexatious" or "malicious".

Free Text Box:

We have some concerns about the use of these terms to label complaints as this could be open to a wide interpretation and used to dismiss genuine complaints simply where they are seen to be annoying or inconvenient. These should be high thresholds to meet and only used in the most exceptional cases. Strict criteria should be set as to what constitute this and particular attention should be given to the characteristics and needs of the complainer. Particular care should be given to dealing with individuals with disabilities who may find usual means of communication and processes complicated. Also the context of the complaint should be considered, an example we see often involves domestic abuse committed by serving police officers and consideration should be given to the powerful position their status as officer provides them and how this could increase their ability to control their victim.

3.5K Do you have any further comments you wish to make in relation to senior officer misconduct cases?

Free Text Box:

Police Investigations and Review Commissioner (PIRC) power to present a case

3.5I Do you agree that the PIRC should be able to present a case at a senior officer gross misconduct hearing?

Don't know

3.5J Do you agree that the independent legally chaired panel should have the capacity to hold a preliminary hearing to identify any evidence that is not in dispute and can be agreed, as well as any other matters that can be resolved ahead of the formal hearing?

Don't know

3.5K Do you have any further comments you wish to make in relation to senior officer misconduct cases?

Free Text Box:

Recommendation to suspend

3.5L Should the PIRC have the ability to recommend the suspension of a senior officer?

Yes

3.5M If the PIRC is to be able to recommend the suspension of a senior officer, to what extent do you agree or disagree that suspension should only be recommended in circumstances when not suspending the officer may prejudice an effective misconduct investigation?

Disagree

3.5N Please explain your answer using the free text box below

Free Text Box:

We submit that there will be other reasons why a serving officer should be suspended pending an investigation. This might include safeguarding issues or situations where it would be distressing for the victim/ survivor for them to remain in post. This should be dependant on the seriousness of the allegations made.

3.5O If the PIRC is to be able to recommend the suspension of a senior officer, should the PIRC be required to provide supporting reasons when they make such a recommendation to the SPA?

Yes

3.5K Do you have any further comments you wish to make in relation to senior officer misconduct cases?

Free Text Box:

Vexatious complainers

3.6A Given the work that is already underway to align processes and policies on vexatious complainers across policing bodies, should the Scottish Government also consider amending legislation to deal with vexatious complainers?

Don't know

3.6B What safeguards should be put in place in relation to vexatious complainers to ensure anyone complaining to policing bodies in Scotland is treated appropriately and fairly? Please provide details using the free text box below.

Free Text Box:

We understand that the Police Scotland are seeking to tighten controls surrounding complainers they consider to be vexatious and would seek to raise some matters surrounding this issue. We have supported a number of survivors of gender based violence who have been involved in the complaints

process and are aware that for some of them it is necessary to make multiple complaints over a period of time. This can be compounded when the complaint process is prolonged and the matter complained about is not resolved and continues to happen. We would not want there to be a risk that a survivor in their situation be labelled as vexatious.

Additionally, we would point out that many survivors we support are suffering from trauma, both from the violence/ abuse they have suffered and also from engaging in criminal justice processes, such as the police. This can cause some survivors to have difficulty controlling their emotions or acting rationally at all times. A trauma informed approach would involve dealing with these situations in an understanding way and not dismissing complaints on this basis.

Provisions to issue statutory guidance relating to conduct

3.7A Should the Scottish Ministers be able to issue statutory guidance in respect of conduct?

Yes

3.7B If the Scottish Ministers are to be able to issue statutory guidance, should they be required to consult on any such guidance?

Yes

3.7C If the Scottish Ministers are to be able to issue statutory guidance, then should a duty to have regard to any such guidance be placed on policing bodies?

Yes

3.7D If the Scottish Ministers are to be able to issue statutory guidance, then should any such guidance be used to bring forward guidance in respect of a new Reflective Practice Review Process?

Yes

3.7E If statutory guidance on conduct is to be prepared, should the Scottish Ministers consider using this to make clear where matters relate to conduct and where they do not (i.e. where they may relate to performance or grievance matters instead)?

Yes

3.7F Do you have any further comments you wish to make in relation to the issuing of statutory guidance?

Free Text Box:

We believe this would be a useful tool in learning lessons from previous policing mistakes, responding to public concerns and seeing this follow through into policy.

Review of disciplinary and grievance procedures

3.7G To what extent do you agree or disagree that regulations governing police conduct in Scotland should be reviewed in order that consideration can be given to bringing them into line with Acas' latest code of practice on disciplinary and grievance procedures?

Not Answered

Joint misconduct proceedings

3.7H Should it be possible for joint misconduct proceedings to be held to deal with any number or rank of officers?

Don't know

3.7I If joint misconduct proceedings are to be possible when appropriate as per question 3.7H, what should be taken into account in making the decision to hold joint proceedings? Please provide details using the free text box below.

Free Text Box:

3.7J If joint misconduct proceedings are to be possible when appropriate, what safeguards should be put in place to protect the rights of each individual officer? Please provide details using the free text box below.

Free Text Box:

3.7K If joint misconduct proceedings are to be possible when appropriate, who should make the decision as to whether joint proceedings are appropriate in each circumstance? Please select one option only.

Not Answered

Please Specify:

3.7L Do you think any of the following changes to gross misconduct hearings would have altered how you answered the above questions (3.7H-3.7K)?

Not Answered

3.7M Please explain your answer using the free text box below.

Free Text Box:

Suspension

3.7N Given that the speed of an investigation and its perceived fairness and rigour can be considered a trade off against one another, to what extent do you agree or disagree that any allegation of misconduct should be dealt with more speedily during an officer's probation period?

Not Answered

3.7O If allegations of misconduct are to be dealt with during an officer's probation period, how should these be dealt with? Please select one option only.

Not Answered

Please specify:

3.7P Would your answer to either N or O be different if timescales relating to the investigation stages of misconduct allegations were set out in legislation to say how quickly an investigation should be conducted (as discussed on page: Accelerated misconduct hearings in Question 3.4L)?

Not Answered

3.7Q Please explain your answer using the free text box below.

Free Text Box:

Alternatives to suspension

3.7R Should there be a condition which must be met before an officer is suspended? Please select all options that apply.

Don't know

Please Specify:

3.7S If a condition must be met before it is recommended that an officer is suspended, which officers should this relate to?

Don't know

3.7T Should all suspended officers have the terms of their suspensions reviewed regularly? Please select one option only.

Don't know

Please Specify:

Special constables

3.8A Do you agree that conduct regulations for special constables should be revised to bring them in line with those for regular police officers?

Yes

3.8B Do you have any further comments you wish to make in relation to changes to conduct regulations for special constables?

Free Text Box:

Special Police constables still have a level of power conferred on them by nature of their role. They are also given access to vulnerable people and placed in a position of trust. They should be held to account and subject to the same regulations as regular police officers.

Liability for unlawful conduct

4.1A Should liability for unlawful conduct, provided to all other constables when carrying out their functions, be extended to cover the rank of Chief Constable?

Yes

4.1B Please explain your answer using the free text box below.

Free Text Box:

About You

What is your name?

Name:

Kate Thompson

What is your email address?

Email:

kate.thompson@rapecrisisscotland.org.uk

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Women's Rights Centre

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent