

OFFICIAL

10 Jun 2024

Our Ref: DCC 59.24



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Dear Convener,

**POLICE (ETHICS, CONDUCT AND SCRUTINY) (SCOTLAND) BILL (PECSS) –
POLICE SCOTLAND EVIDENCE TO THE CRIMINAL JUSTICE COMMITTEE – 22
MAY 2024**

I refer to the above subject and extend my thanks to the Criminal Justice Committee for the opportunity to provide evidence and context to Police Scotland's written submission of December 2023, and views on the Financial Memorandum of November 2023.

As the evidence sessions draw to a close and the Committee considers its final Stage 1 scrutiny of the Bill, I would like to take this opportunity to reiterate the key points of our evidence and to emphasise our commitment to working with stakeholders to expedite the review of secondary legislation to mitigate risk and further enhance public trust and confidence in policing.

Whilst it is accepted that enactment of the PECSS Bill must take place to 'enable' certain aspects of secondary legislation to be fully implemented, it is considered that work must be expedited, in parallel with Scottish Government and key stakeholders, to commence a root and branch review of the Police Service of Scotland (PSoS) (Conduct) Regulations 2014 and the PSoS Regulations 2013.

Key provisions considered a priority from a Police Scotland perspective are:

- **Fast Track**

To introduce accelerated misconduct proceedings for cases where;

- (i) the factual evidence is incontrovertible and;
- (ii) that evidence is incontrovertibly gross misconduct; and
- (iii) dismissal is mandated in the public interest.

It is proposed that the introduction of a fast-track provision is relevant for those cases where there can be no justification for an officer remaining in post any longer than the procedure required to convene a fast-track hearing takes. Examples will include, but are not limited to, where the officer has been convicted of a criminal offence of such gravity that dismissal is in the public interest, for example the majority of sexual or domestic crimes.

This provision will enable a swift but procedurally fair conclusion to the matter, for the benefit of all involved, whilst enhancing public trust and confidence as the individual will quickly no longer be a serving officer reflecting the gravity of their gross misconduct. Under current provisions, officers remain suspended for significant periods of time with the outcome being either resignation shortly before the hearing or dismissal by the chair. This negatively impacts on public trust and cannot be permitted to continue. Lady Angiolini herself spoke about Summary dismissal by the Chief Constable in her evidence to the committee and this links to one of her recommendations.

- **Equality of Arms in Representation at Gross Misconduct Hearings**

At present, there is no provision within the PSoS (Conduct) Regulations 2014 for a case to be presented to a Chair of a Gross Misconduct Hearing. This requires an urgent update to provide the Deputy Chief Constable (DCC) with the right to legal representation to present a case.

Reg 8(5) of the English Conduct Regulations 2020 provides that:

'The appropriate authority...may be represented at misconduct proceedings or an accelerated misconduct hearing or an appeal meeting by;

- (a) a police officer or police staff member of the police force concerned, or*
- (b) at a misconduct hearing or an accelerated misconduct hearing only, a relevant lawyer (whether or not the officer concerned chooses to be legally represented).'*

This reform is considered essential and pressing due to wider societal influences following the convictions of Wayne Couzens and David Carrick in England. As Defence Advocate expertise increases, matching expertise from Prosecuting Counsel should be provided in fairness to all involved. The growing complexity of regulatory law in this field will result in a requirement of Prosecuting Counsel assistance for misconduct panels. In addition, protection of the public, and vulnerable witnesses, demands that the PSD side of the Gross Misconduct Hearing should be represented by an Advocate who can protect the interests of

vulnerable persons i.e. victims of sexual predation. The current absence of a 'presenter/prosecutor' leaves the Chair in a precarious position which can result in suggestions of unfairness should the Chair be seen to favour one side over the other.

Modernising the PSoS (Conduct) Regulations 2014 in this area will enable the development of an expert cadre of Prosecuting Advocates which will increase the quality and expedition of misconduct hearings leading to greater public satisfaction.

- **Misconduct proceedings to progress without delay**

An amendment to Regulation 7 of the PSoS Regulations 2013 and Regulation 9 of the PSoS (Conduct) Regulations 2014 should be made to make it the default position that misconduct proceedings "*must proceed without delay*".

Elsewhere in the UK, this has been achieved by Reg 10 of the 2020 conduct regulations which reads in respect of outstanding or possible criminal proceedings that, subject to the provisions of this regulation, **proceedings under these Regulations must proceed without delay**. It is noted that the appropriate authority must decide whether misconduct proceedings or an accelerated misconduct hearing **would** prejudice any criminal proceedings and for any period during which the appropriate authority considers any misconduct proceedings or accelerated misconduct hearing would prejudice any criminal proceedings, no such misconduct proceedings or accelerated misconduct hearing may take place.

Notwithstanding it is accepted that this must not prejudice any existing or future criminal proceedings and that engagement with COPFS would be essential.

This would rebalance the current regulations where the assumption is not to proceed and require evidence as to why not to proceed without delay.

- **Vetting provisions**

There must be a mechanism for removing an individual who cannot maintain their vetting from Police Scotland. This gap in legislative provision is highlighted in Recommendation 1 of the HMICS Assurance Review of Vetting Policy and Procedures within Police Scotland which states:

*'The Scottish Government should place into legislation the requirement for all Police Scotland officers and staff to obtain **and maintain** a minimum standard of vetting clearance and the provision for the Chief Constable to dispense with the service of an officer or staff member who cannot maintain suitable vetting.'*

To ensure a clear and transparent route, which is fair and will be robust against legal challenge, Police Scotland are fully supportive of the recommendation by HMICS. Police Scotland is keen to explore opportunity to develop legislation for both officers and staff to require them to maintain Recruitment Vetting (RV) and the mechanism to dismiss them should they not maintain that status.

This is proportionate and necessary to enhance public trust and confidence and maintain the integrity of the organisation. It would provide a transparent and appropriate route through legislation, which in turn ensures procedural fairness for individuals subject of the removal of RV.

- **Substance Misuse Testing** ('with cause' and 'random' testing)

There is currently no express statutory provision within legislation in Scotland to permit Police Scotland to carry out 'with cause' drug testing in circumstances where information or intelligence is received regarding potential substance misuse, however, during the recruitment process our policy is to drug test as a 'condition of potential appointment'.

Consequently, Police Scotland would welcome explicit legislation which provides express statutory powers to support the organisations ability to;

- require a police officer or member of police staff to provide a 'with cause' sample where information or intelligence of substance misuse is received;
- permit random drug and alcohol testing amongst police officers and members of police staff;
- compel police officers and members of police staff to provide associated samples.

The absence of statutory provision to enable random drug and alcohol testing of officers and staff constrains Police Scotland's ability to ensure the fitness of its workforce and to deter those who may take illegal substances or drink alcohol to the extent that it impairs their ability to perform their duties.

Regular engagement continues to take place with Scottish Government colleagues as the Bill progresses through the Scottish Parliamentary scrutiny process. There is a collective will to expedite the review of secondary legislation to incorporate the significant changes to modernise the existing PSoS Regulations and Conduct Regulations. Notwithstanding, if there is an opportunity to include some, or all, of those provisions on the face of the Bill or, alternatively, to instruct an expeditious review of secondary legislation, the assistance of the Committee would be very much appreciated.

Despite the significant improvements and progress made across all areas of complaints and conduct matters, Police Scotland recognises that much more can be done to ensure that those individuals who do not belong in policing are swiftly exited from the organisation. Consultation and collaboration are key to expediting change and I can reassure the Committee that Police Scotland is fully committed to delivery of extensive modernisation in this area.

Yours sincerely



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