

OFFICIAL

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Our Ref:

Criminal Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh,
EH99 1SP

By email only:

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Alan Speirs
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Dear Convenor,

**POLICE SCOTLAND RESPONSE TO CRIMINAL JUSTICE COMMITTEE STAGE 1
REPORT ON POLICE (ETHICS, CONDUCT AND SCRUTINY) (SCOTLAND) BILL**

Following review of the Criminal Justice committee Stage 1 Report of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill and the recommendations contained within it on behalf of Police Scotland I would like to provide the following observations.

Code of Ethics

Police Scotland supports the Committee's position that the Chief Constable should have responsibility to prepare, consult widely on, publish, and revise the Code, with the assistance of the SPA.

In reviewing the Stage 1 Report in relation to the Code of Ethics, in particular paragraphs 51 and 52, there is confirmation that the proposal of the Bill is to introduce Police Scotland's existing Code of Ethics into legislation and that this remains the position of the Committee. The Chief Constable would have a duty to thereafter undertake consultation and review of the code of ethics every five years.

Police Scotland welcomes this position as this would place the current code of ethics (attached to this correspondence) on a statutory footing, embedding an established code within current practice whilst enabling planning and ongoing activity to ensure other aspects of the bill were delivered, including developing and designing training for all officers, prior to any anticipated enactment of the legislation. We would then be committed

to undertaking a review and progressing the statutory consultation and sharing of a future draft code over the proceeding five years.

Should the Committee's position be that a new Code of Ethics should be developed, consulted on, and revised prior the Bill being introduced into legislation, I would highlight that suitable notice and significant application of resource would be required to enable those activities to be undertaken.

Duty of Candour

- The Committee appreciates that the overwhelming majority of police officers already adhere to the principles set out in the proposed duty of candour. For the small minority of officers who do not, Police Scotland should pursue the relevant disciplinary proceedings when it is demonstrated that officers are not adhering to the new duty (Para 145)
- The Bill introduces an individual duty of candour on constables by adding the duty to the standards of professional behaviour within the conduct regulations for all officers. The standards of professional behaviour apply to officers whether they are on or off duty. The Committee asks Police Scotland to clarify its reasons for asking that care be taken when extending the duty of candour to circumstances that happen off duty. (Para 151)

With regards to the proposed Duty of Candour for officers, Police Scotland support the position of introducing a Duty of Candour, which it is proposed would be included in the Police Scotland's Standards of Professional Behaviour as an additional standard.

Our Standards of Professional Behaviour are set out within The Police Service of Scotland (Conduct) Regulations 2014 and are the expectations we set of our officers whether on or off duty.

By including the duty of candour as a new standard, if there is subsequently a report, allegation, or complaint from which it could reasonably be inferred that the action or omission may amount to misconduct or gross misconduct, an assessment and investigation could be undertaken and if a breach of that standard of professional behaviour had occurred then Police Scotland could, where appropriate, take necessary disciplinary action.

The reason for asking for care to be taken in extending the Duty of Candour to circumstances which happen off-duty is as follows. The Duty of Candour relative to other professionals such as those working in medicine, is relative to their professional roles providing candour towards patients, employees and their organisations. Officers, like all members of the community, have a right to a private life. Extending a Duty of Candour into off duty circumstances could have potential Article 8 ECHR implications in relation to officer rights and impact on their private and family lives, where they may be expected to provide candour in relation to a matter which may have significant and disproportionate implications, not only on them and their private lives, but also on the lives of a family member.

Members of the public have responsibilities and protections such as provision under the Criminal Procedure (Scotland) Act 1995 where a person can, as a potential witnesses, be

required to provide their personal details, but they cannot be compelled to provide a witness statement or any information other than those basic personal details. Additionally, a person cannot be compellable as a witness against a spouse unless they themselves are the victim of a crime. These examples could conflict with a duty of candour that an officer may require to adhere to whilst off duty and could be seen as an infringement of that officer's own human rights and as such potential be subject to legal challenge.

It is also unclear how the requirement that an officer is "open and truthful in their dealings, without favour to their own interests or the interests of the Police Service" would operate in an off-duty context. It is unclear with whom they require to be open and truthful with and whether "dealings" relates only to on-duty matters.

Based on these concerns it is the view of Police Scotland that consideration could be given to the duty of Candour relating only to on duty situations, or off duty situations where officers have utilised their position as a police officer or recalled themselves to duty.

In terms of members of police staff, it is Police Scotland's position that duty of candour should be reflected in the staff code of conduct.

Timescales for Gross Misconduct Proceedings

- The Committee would have concerns if any investigations into gross misconduct took longer than is necessary. As such, the Committee recommends that any investigations into an officer who has left the force should be completed as timeously as possible. We also recommend that the SPA monitors this process over the initial years to ensure that this is the case and shares its findings with the Committee. (Para 336).

The provision within the bill to enable investigations into allegations of gross misconduct by former officers and the committee's recommendation that any investigation in relation to an officer who had left the service should be completed as timeously as possible are noted. Like serving officers, should an allegation of gross misconduct be linked to an allegation of a criminal offence this may cause the misconduct or gross misconduct investigation to be paused or postponed in line with regulation 9 of the Conduct Regulations until either the appropriate prosecutor decides not to proceed or until criminal proceedings are concluded.

Notwithstanding the above, it is always a priority to progress misconduct and gross misconduct investigations as timeously as possible, recognising the impact these can have on those involved, whilst balancing the need for professional and appropriate investigations. It would be the position of Police Scotland that like serving officers Gross Misconduct investigations in relation to former officers would be progressed as timeously as possible.

The potential increase in demand that this provision of the Bill may bring is recognised and as such part of the financial forecast submitted by Police Scotland recognises the projected requirement for an increase in staff within the Conduct section of Police Scotland's Professional Standards Department to manage that demand.

Police Scotland regularly reports performance in relation to complaints about the police and conduct matters to the Scottish Police Authority via the Complaints and Conduct

Committee and the data set, which is regularly reviewed to ensure the SPA's requirements are met. To enable oversight, including the timescales for such investigations, and ensure appropriate scrutiny there would be potential in future to include data regarding gross misconduct investigations relating to former officers within the existing reporting framework.

The length of time it can take to resolve gross misconduct and conduct matters however is also recognised by Police Scotland. Discussion remains ongoing with the Scottish Government to explore opportunities to expedite amendments, possibly by secondary legislation, to the current regulations and guidance which would enable a more timeous progression of such matters and bring improvements. I would highlight the urgent need for these amendments within the current conduct regulations as previously outlined in correspondence to the Committee.

Complaints About the Police

Police Scotland shares the concerns of the committee in relation to the time it can take for a complaint about the police to be resolved and their reservations over whether the bill will sufficiently improve the experience of officers or members of the public.

This is an area of significant focus for Police Scotland, and a number of areas of activity are being progressed to ensure continual improvement both in relation to the quality of our response to complaints about the police and the time it can take to resolve complaints which are ongoing and not reliant on the provisions contained within the Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'AS', with a stylized flourish extending to the right.

Alan Speirs
Deputy Chief Constable