

Meeting	SPA Complaints & Conduct Committee
Date	3 March 2021
Location	Video Conference
Title of Paper	Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing – SPA Update
Presented By	SPA Complaints Team
Recommendation to Members	For Discussion
Appendix Attached	Yes – Appendix A – High Level Plan

PURPOSE

This is a briefing to the Complaints and Conduct Committee to provide an update on the actions related to recommendations in the Preliminary Report on the Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing, led by Dame Elish Angiolini, and to seek approval of a high level plan outlining proposed implementation actions and oversight arrangements in respect of those recommendations set out in the Final Report.

The paper is presented in line with:

- *Scottish Police Authority Committee Terms of Reference*

The paper is submitted:

- *For Discussion*

1 INTRODUCTION

- 1.1 The Final Report on the 'Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing' (the Report) was published on 11 November 2020.
- 1.2 The Report identified a total of 81 recommendations, although a number of these reflect recommendations in the Preliminary Report issued in June 2019. Implementation of over one third of the recommendations will require legislative change.
- 1.3 Across both reports, there are only 12 recommendations specifically listed in relation to the SPA and, of those, three – which require legislative change – are effectively directed to the Scottish Government.
- 1.4 There are numerous other recommendations throughout both reports which are equally applicable, or relevant, to the SPA. There are also a number of key observations in both reports which, while not formal recommendations, also require to be considered.
- 1.5 There are a large number of recommendations directed specifically to Police Scotland, implementation of which requires to be overseen by the SPA and its committees. It is therefore essential that both reports are considered fully.

2 THE PRELIMINARY REPORT

- 2.1 The preliminary report contained a total of 30 recommendations. Of these, four were listed in the chapter dealing with the SPA, although many of the other recommendations and key observations were equally applicable or relevant to the SPA's functions. A brief summary of the recommendations directly applicable to the SPA is given below:
 - *Complaints against senior officers should be prioritised and dealt with by the SPA and the PIRC as speedily as is reasonable.*
 - *Further training for the SPA's Complaints team should be consolidated and broadened.*
 - *The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 (the Regulations) should be clarified and expanded to provide for alternatives to suspension in relation to senior officers who are subject to investigation.*
 - *The preliminary assessment of misconduct allegations against senior officers should take into account factors such as whether the allegation is made anonymously, or appears vexatious or*

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malicious, and the Scottish Government should consider amending the Regulations to that effect.

- *A senior cross-agency working group should be established involving the SPA, Police Scotland and the PIRC to develop appropriate and up to date guidance.*
- *All arrangements for auditing complaint handling practice should be coordinated.*

2.2 Following publication of the report, each of the 30 recommendations, along with key observations, were collated and actions identified to ensure that those relevant to the SPA's functions were implemented as far as possible.

2.3 In total, 38 actions were identified in respect of those recommendations and key observations considered applicable or relevant to the SPA. Of these, 13 related to the Complaints and Conduct Committee's oversight of those recommendations directed specifically to Police Scotland. Some of the actions identified were capable of being completed by the SPA itself. Others required discussion with the Strategic Oversight Group, or at the National Complaint Handling Development Group (NCHDG), which currently reports to the SOG.

2.4 Many of the actions required changes to the SPA's Complaint Handling Procedures and Guidance on the Regulations. These included the prioritisation by the SPA of complaints about senior officers of Police Scotland; the approach to be taken to the preliminary assessment of misconduct allegations against senior officers under the Regulations; and the factors to be considered when determining whether or not a senior officer is to be suspended, including alternatives to suspension. The Complaints team can advise that consultation on the procedures and guidance is now complete. However, the intention is to await publication of the PIRC's revised statutory guidance on complaint handling, before the SPA's amended procedures and guidance are submitted to the Complaints and Conduct Committee for approval.

2.5 There are also outstanding actions in relation to the following:

- *Agreement between the SPA, Police Scotland and the PIRC on the prioritisation and coordination of future complaint handling audits.*

This issue is being progressed through the NCHDG. At its recent meeting on 11 January 2021, it was agreed that representatives would meet separately to consider further a coordinated approach to audits by the SPA and the PIRC.

- *Changes to the Complaints section of the SPA's website to make clear the complaints which the SPA does and does not deal with, and to make the complaints process simpler overall.*

Various changes have been made to the Complaints pages of the SPA's website to clarify the SPA's role. Further changes, including a fully functional online complaints form, will be made as part of the current project to develop the SPA's website.

- *Coordination of training between the SPA, Police Scotland and the PIRC, including training in mediation.*

Efforts to develop coordinated training opportunities across the three organisations have been affected by COVID-19. However, Police Scotland recently established a short life working group on training, which will meet within the next 4 weeks. The outcome of the group's discussions will impact on future training opportunities for the SPA's complaint handling staff.

- *A review by the SPA, Police Scotland and the PIRC of their respective "unreasonable actions" policies (which set out measures that may be taken in relation to complainers whose actions are considered unreasonable) to ensure they are consistent.*

This issue is also being progressed through the NCHDG. A final draft of an unreasonable actions policy for adoption by all three bodies is expected to be presented at the next NCHDG meeting on 4 March 2021.

3 THE FINAL REPORT

- 3.1 As with the preliminary report, the recommendations in the final report have been collated by the Complaints team and actions identified to implement those which are applicable or relevant to the SPA's functions, and which do not require legislative change.
- 3.2 A draft plan is attached for consideration, outlining the 81 recommendations in the final report, and dividing these into three categories – SPA Implementation, SPA Oversight, and Information Only. Those categorised as 'SPA Implementation' include those recommendations which are singly or jointly aimed at the SPA, plus a number of others, not aimed at the SPA, but which are nevertheless considered applicable. The plan outlines initial high-level actions against each for consideration which, if the Committee is in

agreement, will be developed in more detail (see below). Those categorised as 'SPA Oversight' refer to recommendations which are singly or jointly aimed at Police Scotland, and for which the SPA has an oversight role (although see section 4 below in respect of national governance and reporting arrangements). Those categorised as 'Information Only' recommendations are those which SPA has no role in implementing or overseeing, although in some instances resulting actions may have implications for the SPA. As with the Preliminary Report, there are also a number of instances, where the author makes recommendations of relevance to the SPA, but which are not subsequently 'formalised'. These are noted in the attached plan, and Member views are sought in this regard.

3.3 The final report lists eight recommendations in the chapter which deals specifically with the SPA, although again there are other recommendations and observations elsewhere in the report which are equally applicable or relevant to the SPA. Three of the eight recommendations - concerning the removal of the SPA's complaints and conduct functions in relation to senior officers - require legislative change and are therefore a matter for the Scottish Government.

3.4 Those recommendations directly applicable to the SPA which do not require legislative change are summarised below.

- *The PIRC should work collaboratively with the SPA to agree and embed a proportionate and effective approach to the preliminary assessment of misconduct allegations against senior officers, until such time as this function is removed from the SPA.*

Draft changes have already been made to the SPA's Guidance on the Conduct Regulations, detailing the factors which the SPA may take into account in conducting preliminary assessments of misconduct allegations against senior officers. As noted above, these have been the subject of consultation and the revised guidance will be submitted to the Complaints and Conduct Committee for approval once the PIRC's statutory guidance is issued. Discussions will take place with the PIRC to establish what further collaborative work can be undertaken in this area, pending legislative change, with a view to presenting back (where possible) to the May meeting of the Committee.

- *The Complaints and Conduct Committee should hold Police Scotland to account for delays in investigations into complaints and misconduct. Where there is evidence of excessive delays in*

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PIRC investigations having an effect on policing in Scotland, the Committee should raise the matter with the PIRC. The Review also recommends that the Chief Constable publish annually Police Scotland's performance in dealing with complaints against the timescales set out in the PIRC's statutory guidance; and that the Complaints and Conduct Committee scrutinise and hold to account Police Scotland's performance in this area.

Currently, Police Scotland produces to the Complaints and Conduct Committee a quarterly report containing detailed statistical and other information on complaint and conduct matters. While these published reports include figures as to the number and nature of complaints, they does not contain details of the time taken to investigate complaints and alleged misconduct. Discussions will take place with Police Scotland with a view to the inclusion of this information in future reports, in order that the Committee may exercise appropriate oversight in this area. It is hoped that an initial proposal in this regard can be tabled at the May Committee meeting, for inclusion from this point forwards (although recognising scope for ongoing development thereafter).

- *To increase public confidence in the system, the Complaints and Conduct Committee should consider using its minutes as a means of sharing with the public more of their substantive discussions and how Police Scotland is being held to account in this area; and also whether some of the content within minutes of its private sessions, where some strategic and policy matters are discussed, can be included in the published minutes.*

Implementation of this recommendation can be achieved by simple changes to minute-taking practice, and by reviewing the minutes of private sessions with a view to publication of items as appropriate, with a proposed approach being submitted for Committee consideration in May, and utilising the minute of the March meeting in the first instance.

- *The Complaints and Conduct Committee's scrutiny function should be reported on in the SPA's annual report, drawing out particular trends etc. and using complaints data as an indicator of communities' satisfaction or dissatisfaction with policing services.*

Proposals on how this recommendation can be implemented will be submitted to the May Committee meeting, with a view to initial incorporation into the 2020/2021 Annual Report. In addition, and to enable earlier reporting, it is proposed that a Committee-

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specific annual report is produced. Subject to Member agreement, a draft for 2020/2021 will be developed and submitted at the May Committee meeting for consideration (recognising scope to further refine in future years, in light of progression of other actions being taken forward as outlined below and in the attached plan).

- *Police Scotland and the SPA should consider expanding the collection of diversity data and the publication of information in order to enhance their understanding, and public understanding, of attitudes and concerns in different communities.*

The SOG is considering ways in which the SPA, Police Scotland, the PIRC and COPFS can standardise the diversity data which each body collects. The SPA's online equality and diversity monitoring forms will also be enhanced as part of the current website development project, which is scheduled for completion at the end of May 2021.

- *The SPA and Police Scotland should consider together what role the Complaints and Conduct Committee or Policing Performance Committee may have in relation to the discussion of ethical issues in policing.*

Meetings will be arranged between the Chairs of the two Committees, in advance of more detailed discussions between the Authority and Police Scotland, with resulting initial proposals being presented to the relevant Committee for consideration thereafter.

- *The SPA should confirm each year in its annual report whether, based on an assessment by the Complaints and Conduct Committee, the Chief Constable has suitable complaint handling arrangements in place.*

This recommendation is based on the SPA's duty under section 60(3) of the Police and Fire Reform (Scotland) Act 2012. The PIRC has a similar statutory duty under section 40A of the Police Public Order and Criminal Justice (Scotland) Act 2006. Accordingly, any confirmation of the suitability of Police Scotland's arrangements for handling relevant complaints would be based on an assessment by the Complaints and Conduct Committee, as well as consultation with the PIRC. Update in respect of proposed action in relation to the annual report, more generally, is outlined above.

3.5 The Complaints and Conduct Committee will play the primary role in overseeing implementation of those recommendations applicable or relevant to the SPA. However, the People Committee and Policing

Performance Committee will also play a role where the recommendation relates more to their respective terms of reference.

- 3.6 Specifically in relation to those recommendations relating to equality, diversity and inclusion, the Authority has requested a regular progress update from the Chief Constable. At the time of writing, it is anticipated that the first update will be reported to the Authority's public meeting on 24 February. Police Scotland have established a new Equality, Diversity, Inclusion & Human Rights Strategic Oversight Board, including SPA officer membership, which will meet for the first time on 1 March. It is also anticipated that the recommendations in this regard will be used to inform revised SPA/Police Scotland Equality Outcomes which are due to be published in April 2021.
- 3.7 A working group of SPA officials will be established to ensure effective coordination of implementation and oversight activity across the Authority. Following discussion of the draft action plan at Committee, its initial task will be to develop SMART actions in respect of those recommendations where the SPA has an implementation role. SPA officials on the group will also liaise with Police Scotland to understand development of actions for which the SPA has an oversight role, and to ensure that this is captured in the respective Committee work plan.

4 National Governance & Reporting Arrangements

- 4.1 Following publication of the final report, a roundtable meeting took place on 21 December, attended by the Cabinet Secretary for Justice, Scottish Government officials and senior leaders from across key partners referred to in the report (including the SPA Interim Chair, Interim Chief Executive and Head of Legal). A subsequent meeting of officials took place on 19 January 2021, building on earlier discussion to develop detailed proposals on governance, the reporting framework and prioritisation. Prior to the meeting, each organisation (including the SPA) was asked to share their initial thematic assessment of the report recommendations (although attendees were not party to all organisational submissions). The outputs of the above meeting were used to inform a formal response from Scottish Government and COPFS in advance of the Cabinet Secretary appearing before the Justice Sub-Committee on Policing on 15 February. That report states that SG and COPFS, working with partners, intend to accept the majority of the recommendations, many as specifically set out, but with scope to explore options where other routes or mechanisms may achieve

the desired outcome. Relevant commentary from the report on specific recommendations is included in the attached action plan. A summary of the resulting proposed governance structures, reporting framework and next steps is outlined below.

4.2 The following governance structures are proposed:

- *Ministerial Group* (MG) with responsibility for providing overall accountability and governance; setting policy direction and overarching objectives; seeking assurance on progress and risks; and approving decisions and publications. The group will meet on a quarterly basis and be co-chaired by the Cabinet Secretary and Lord Advocate, with membership comprising the Chief Constable, PIR Commissioner, SPA Chair and Chief Executive, and HMICS Chief Inspector.
- *Strategic Oversight Group* (SOG) with responsibility for providing strategic direction for delivery; commissioning work streams and tasks; monitoring and reporting on progress and risks; and making recommendations to the MG for decision. In addition to existing membership (including SPA Head of Legal, transitioning to Head of Workforce Governance), the SOG will be jointly chaired by senior representatives of SG and COPFS, with membership extended to HMICS for the duration of its work on implementation of the report recommendations. Meetings will have a partitioned agenda, however, to allow for discussion of ongoing shared operational matters, for which both SG and HMICS will withdraw.
- The SOG will commission a new *Practitioner Working Group* (PWG), with membership drawn from each of the operational partners and policy leads from SG. It is anticipated that SPA will be represented by the Complaints & Conduct Team (although with scope for involvement of others as applicable). It will meet more frequently, taking forward work stream development and delivery of specific tasks; managing interdependencies and risks; and preparing reports for approval of SOG and MG.

4.3 A commitment has also been given to consulting with staff associations on these recommendations, ensuring discussion on 'front-line' issues impacting their members, across the themes and on future proposals for legislative amendments.

- 4.4 Recommendations (from the final report, as well as those outstanding from the preliminary report not since superseded) have been grouped by theme, for reporting purposes, as follows (and as marked on the attached spreadsheet):
- *Rights & ethics*
 - *Jurisdiction & powers*
 - *Governance & accountability*
 - *Transparency & accessibility*
 - *Equality, diversity & inclusion*
 - *Conduct & standards*
 - *Training & HR*
 - *Efficiency & effectiveness*
 - *Audit & review*
- 4.5 A quarterly high level thematic progress report will be published by SG, following MG signoff. Different governance structures will apply to those recommendations which stretch beyond policing (e.g. those relating to NHS mental health provision).
- 4.6 The SG/COPFS parliamentary response commits to bringing forward comprehensive primary legislation to cover the necessary legislative changes in a single instrument where possible, supported by secondary legislation where necessary, to avoid a piecemeal approach, although acknowledging the forthcoming elections and that parliamentary time is currently under a lot of pressure due to the pandemic. It otherwise commits, along with partners, to continuing to prioritise and progress implementation work streams that are not contingent on changes to legislation, acknowledging that there will be some recommendations where further discussion is required within and between organisations in order to reach agreement on options to be delivered.
- 4.7 The first meeting of the Strategic Oversight Group, in line with its revised membership and responsibilities, took place on 17 February, where terms of reference and a calendar of meetings were agreed. Further discussion is required in respect of the role of the existing NCHDG and that of the proposed PWG, recognising the wider proposed scope of the latter. Following confirmation from Scottish Government on the approach to reporting, the PWG will be commissioned to develop a reporting template, recognising plans for the first progress report to be submitted to the MG for signoff in May. Following discussion on action planning activity across individual organisations, partners agreed to seek to categorise recommendations, in advance of the next meeting in late March, in

respect of those which do or do not require legislative change and/or further discussions to enable implementation.

5 FINANCIAL IMPLICATIONS

5.1 There are no financial implications arising directly from this report, although implementation of some of the recommendations in the final report are likely to have financial implications.

6 PERSONNEL IMPLICATIONS

6.1 There are personnel implications arising from this paper in that implementation of many of the recommendations will impact on the way in which complaints about police officers and staff are dealt with.

7 LEGAL IMPLICATIONS

7.1 There are legal implications associated with this paper in that implementation of many of the recommendations will require legislative change.

8 REPUTATIONAL IMPLICATIONS

8.1 There are no reputational implications arising from this report.

9 SOCIAL IMPLICATIONS

9.1 There are no social implications associated with this report.

10 COMMUNITY IMPACT

10.1 There are no community implications associated with this report.

11 EQUALITIES IMPLICATIONS

11.1 There are no equalities implications arising directly from this report, although many of the recommendations in final report do have such implications.

12 ENVIRONMENT IMPLICATIONS

12.1 There are no environmental implications associated with this report.

RECOMMENDATIONS

Members are requested to note the contents of this report and request additional information if required. Specifically, Members are asked to consider proposals set out within the attached high-level plan, in order to allow more detailed action planning to be progressed in respect of those recommendations where the SPA has an implementation role, and to enable coordination of Committee/Board oversight activity.