

Partial Business and Regulatory Impact Assessment

1. Title of Proposal

Police Complaints Handling, Investigations and Misconduct: A consultation on legislative reform.

2. Consultation

2.1 Within Government:

The following teams were consulted – and were provided with drafts of the consultation paper – within the Scottish Government:

- Police Division
- Access to Justice Unit
- Victims and Witnesses Unit
- Reserved Tribunals and Civil Courts team
- Devolved Tribunals team
- Justice Analytical Services
- Communications Division

In addition, extensive collaboration took place with the Community Safety Unit, particularly on provisions relating to the Police Investigations and Review Commissioner (PIRC).

2.2 Public Consultation

The full public consultation will run for 12 weeks.

The following partners took part in discussions in advance of the full public consultation:

- Crown Office and Procurator Fiscal Service (COPFS)
- Police Scotland
- Scottish Police Authority (SPA)
- Police Investigations and Review Commissioner (PIRC)
- HM Inspectorate of Constabulary Scotland (HMICS)

In addition, police staff associations took part in discussions in advance of the consultation through the Scottish Police Consultative Forum and individual meetings.

Other groups made aware of the forthcoming public consultation and given opportunity to provide feedback or engage in informal discussion were:

- Other public sector bodies with an interest in the proposals (for example SCTS, SPSO)
- Human Rights and Victim Support organisations
- Organisations with an interest in legislative change (for example the Law Society, Faculty of Advocates)

- Police diversity associations, staff unions.
- Research groups related to policing reform

2.3 Business

No face-to-face meetings with businesses were required for this policy, however meetings regularly took place with operational partners.

3. Options

3.1.1 The purpose of this public consultation is to gather views on legislative proposals put forward by Dame Elish Angiolini, as well as providing options where there are different approaches or further factors to be considered. For that reason, this partial BRIA covers options briefly and the final BRIA, which will accompany the draft Bill on introduction, will set out more detail on the options selected and proposed for parliamentary scrutiny.

3.2 *Options relating to the rights and ethics recommendations*

3.2.1 **Code of Ethics.** Police Scotland already have a Code of Ethics which is not required by law. One option considered was leaving the Code as a non-statutory document (the 'do nothing' option) however Dame Elish Angiolini's report was clear that while the existing Code was commendable, it should be strengthened by placing it on a statutory footing. The option proposed in the public consultation is placing a requirement for the Code in statute, and also a requirement for it to be consulted on. Also considered was the option of following models in other jurisdictions where the Code of Ethics is set out in primary legislation or in regulations. However, it was considered that this option would be restrictive in that altering the text of the Code of Ethics would require amendment to legislation and that it would cause unnecessary confusion with the existing statutory Standards of Professional Behaviour, with the risk of the Code of Ethics being seen as a further disciplinary tool.

3.2.2 **Duties of candour and co-operation, and the statutory power to compel officers to attend for interview.** While in practice police officers generally respect the implied duty on constables to assist in the investigation of a serious incident, the Angiolini review recommended that the existing law be clarified in order to place explicit duties of candour and co-operation on police officers. The public consultation seeks views as to the level of support for this clarification as well as exploring support for the potential parameters of the proposed duty – for example whether it should apply to both on- and off-duty officers, whether the duty should only apply when an officer's status as a witness has been confirmed. Additionally, a statutory power is proposed to allow PIRC to compel officers to attend for interview within a reasonable timescale. Options around the parameters of this proposal, including which body would determine what is considered a 'reasonable timescale' are explored in the consultation.

3.2.3 Adding the PIRC to the list of prescribed persons in the Public Interest Disclosure (Prescribed Persons) Order 2014 is intended to provide **an independent whistleblowing route** for those working in Police Scotland and the SPA to raise concerns. Currently, there is no prescribed independent third-party

body for whistleblowers in policing in Scotland although Protect provides an independent advice line on behalf of Police Scotland for whistleblowing matters and both Police Scotland and the SPA have produced revised guidance on whistleblowing. While this current position provides a degree of independence, Dame Elish recommends enhancing the protection for whistleblowers by adding PIRC to the list of prescribed persons, offering a similar independent route as currently exists in England and Wales where those in policing can raise whistleblowing concerns with the IOPC. The consultation seeks views on options for that independent route, as well as on audit of whistleblowing complaints.

3.2.4 Providing **non-means tested legal aid to bereaved families in Article 2 cases** during police custody or following contact with the police. As set out in the consultation paper, Dame Elish's recommendation was that free legal aid should be provided in all of these cases. While the number of cases currently granted are relatively low as outlined in the Legal Aid Impacts section below, it was considered that an additional option to allow families or common interest groups to apply for legal aid together could mitigate the impacts of an increased number of cases.

3.2.5 In both recommendations relating to the definitions of "**person serving with the police**" and "**member of public who may make a relevant complaint**", the primary purpose is to provide clarification and remove any dubiety that currently exists. To leave the definitions as they currently stand would prolong debates as to which officers the PIRC can investigate and whether complaints provisions extend to officers on and/or off duty. Questions around whether the term "person serving with the police" allows the PIRC to investigate former officers have led to the commissioning of parallel investigations by PIRC and Police Scotland or an external force to cover serving and former officers involved in the same incident. If PIRC's powers in relation to former officers were clearer, this would remove the need for double handing and enhance the independence of the investigation. The consultation seeks views on clarifying the definition to those who were officers at the time of the act or omission. It also presents options for clarifying both definitions in relation to officers who were off duty.

3.3 *Options relating to governance, jurisdiction and powers recs*

3.3.1 PIRC to be re-designated as a Commission, with the addition of 2 Deputy Commissioners and statutory board as well as the Commissioner becoming a Crown appointment and accountability transferring from Scottish Ministers to the Scottish Parliament.

Dame Elish review concluded that with the addition of significant new powers being assigned to PIRC, there was a consequent need for the current governance and accountability of PIRC to be enhanced and strengthened. Given the sensitivity of the office of the Commissioner, Dame Elish recommended the appointment of two Deputies and to re-designate PIRC as a Commission with the creation of a statutory board. To enhance PIRC's independence the Review also suggested the appointment process of the Commissioner be changed as well as accountability being transferred to Scottish Parliament. The consultation seeks views on these recommendations and suggested options for strengthening PIRC's governance and accountability.

3.3.2 PIRC to be given the capacity to access Police Scotland's Centurion database remotely at their own office or place of work. In light of Police Scotland's data protection concerns, currently, PIRC staff can only access this complaints and conduct database under supervision at a designated police station office. Dame Elish considers PIRC to have a legitimate purpose for accessing the database to carry out contemporaneous audits of complaints and help facilitate early awareness of criminal allegations, recommending this be underpinned in law to ensure compatibility with GDPR. This option is presented in the consultation, which seeks views on whether access should be qualified in any way.

3.3.3 Additional statutory powers for the PIRC. Acknowledging PIRC's existing powers, the Review concluded the system as a whole would be enhanced by giving the Commissioner significant new powers relating Police Scotland's complaint handling, policy and practice, as well as providing statutory underpinning for PIRC recommendations. Currently, the PIRC only reviews how Police Scotland has handled a complaint and not the substance of the complaint itself. The consultation seeks views on whether PIRC should be able to call in complaints and in what scenarios, as well as on proposed powers to investigate Police Scotland policy and practice, in light of the existing functions of both PIRC and HMICS and whether those powers should be circumscribed in any way. The Commissioner currently can – and does – make recommendations to Police Scotland, and the consultation asks whether this should be strengthened by placing those recommendations on a statutory footing, as well as presenting options for corresponding duties on the Chief Constable to respond and/or comply.

3.3.4 The Review highlighted an existing gap in **cross-border jurisdictional powers**, which means PIRC is unable to investigate officers from other jurisdictions involved in serious incidents, allegations of criminality or use of firearms when policing in Scotland. This gap presents significant operational challenges for the investigation of incidents occurring during cross-border operations and mutual aid deployment and while there is a Memorandum of Understanding in place to provide a practical workaround, it would potentially require parallel investigations and does not offer a long term solution to meet ECHR requirements for independent investigation. Discussions are ongoing between the Scottish Government, UK Government and Northern Ireland Executive to develop options for reciprocal legislative arrangements to address this and the consultation seeks views on the factors which should be considered as part of this process.

3.4 Options relating to conduct and standards

3.4.1 Changes to gross misconduct proceedings were proposed in the Angiolini report, including gross misconduct proceedings to be held in public, the outcome of misconduct hearings to be made public, and the Chair of gross misconduct hearings to consider protecting vulnerable witnesses including the officer who is the subject of the gross misconduct proceedings. Views on options for and on the levels of support for the implementation of these recommendations are sought in the consultation.

3.4.2 **Gross misconduct cases continuing after an officer has left the force**, and PIRC having the discretion to commence disciplinary proceedings if the gross misconduct has come to light more than 12 months after the officer has left the service. Options set out in the consultation include whether this should be applied for all or only some ranks of officer, and whether the authority who decides to begin gross misconduct proceedings after the officer has resigned or retired should have to take into account the views of the complainer.

3.4.3 The consultation requests views on the implementation of a **Barred and Advisory List** model, similar to that used in England and Wales, in Scotland. Several legislative and non-legislative options could be considered in order to meet the intent of this recommendation from Dame Elish Angiolini and the consultation will inform future policy development.

3.4.4 **Accelerated misconduct hearings**. Several potential options are presented in the consultation, including allowing the SPA to dismiss officers convicted of criminal acts which would also amount to gross misconduct and under which conditions expedited misconduct hearings may take place. Consultation responses will inform the options considered during future policy development.

3.4.5 The consultation poses a number of questions on the handling of **misconduct allegations relating to senior officers**, including seeking views on whether PIRC should take on new or expanded functions. The Review proposed transferring the preliminary assessment function from the SPA to PIRC to bring greater independence to the process and both organisations have worked closely on the development of new guidance to improve processes in advance of potential legislative change. As well as seeking views on this transfer, the consultation also includes options for increasing PIRC's responsibility for wider aspects of misconduct and gross misconduct proceedings for senior officers, including presenting cases at hearings and recommending suspension during an investigation, to further enhance the independence and integrity of investigation.

3.4.6 Linked to proposals for shifting responsibility for preliminary assessments for allegations of senior officer misconduct, the consultation also presents options for assessing whether complaints could be **vexatious or malicious**. The Review identified significant risks to the leadership of policing posed by potentially vexatious or malicious complaints against senior officers and more broadly, the "profound and devastating impacts" of such allegations at all levels. In her Final Report, Dame Elish welcomed collaborative working between Police Scotland, SPA and PIRC to ensure policies on dealing with vexatious complaints were consistent but proposed that a legislative solution be sought if these proved ineffective.

3.4.7 **Issuing statutory conduct guidance to implement a new Reflective Practice Review Process**, similar to that in use in other jurisdictions. The consultation seeks views on the implementation of this process, which if undertaken would seek to de-escalate matters which should be treated through performance management as opposed to the conduct process. Another option proposed in the consultation for further addressing the issue raised in the Angiolini review around the disproportionate use of conduct regulations in matters that

should be treated as performance issues is to review Police Conduct regulations in order to consider whether they can be brought in line with Acas' Code of Practice on disciplinary and grievances processes.

3.4.8 Joint misconduct proceedings. Options and support for enabling joint misconduct proceedings to be held for any number or rank of officers are set out in the consultation. Views expressed during the consultation period will inform how this policy is further development, including the safeguards to be put in place regarding the rights of individual officers.

3.4.9 Misconduct allegations against probationers to be dealt with during the probation period. It was considered whether this recommendation could be achieved through non-legislative means. However, given the previous challenges to the law around this area, the option proposed in the consultation is that a provision is made to make explicit the correct regulations to follow in the case of gross misconduct against a probationer.

3.4.10 The consultation notes that Conduct Regulations for officers below the rank of ACC already allow for **alternatives to suspension** and poses questions around whether the decision to suspend should be subject to conditions and review, as well as whether this should extend to the conduct regime for senior officers.

4. Sectors and groups affected

4.1.1 Putting the requirement for a Code of Ethics in statute would strengthen the existing code and will predominantly affect police officers and staff, as well as enhancing public confidence.

4.1.2 Creating explicit duties of candour and co-operation would affect police officers, particularly if they are witnesses to or accused of actions which would constitute misconduct or gross misconduct or are party to incidents that require investigation. It would also impact on COPFS and PIRC in strengthening the independent investigation of the most serious incidents involving the police.

4.1.3 Adding PIRC to the list of prescribed persons in The Public Interest Disclosure Order would primarily affect police officers and staff who are witnesses to wrong-doing. It would also affect PIRC staff and additional demand on resources could be expected as a result. Additionally, whistleblowing and enhancing protection for whistle-blowers is in the wider public interest.

4.1.4 Giving bereaved families in Article 2 cases access to free legal representation will affect close relatives of people who have died while in police custody. It will also affect their legal representatives and the provision of legal aid services given that eligibility criteria would have to be altered in order for this provision to be delivered.

4.1.5 Increasing clarity around definitions would reduce the resources required to commission parallel investigations from both PIRC and from Police Scotland or an external force where investigations need to cover former officers. Those

affected would include COPFS, PIRC, Police Scotland and officers or former officers under investigation.

4.1.6 Enabling PIRC staff to access Police Scotland's complaints and conduct database (Centurion) for the purposes of contemporaneous audit would affect both PIRC and Police Scotland staff, and former, current and future police officers whose conduct or about whom complaints may be recorded in the database.

4.1.7 The proposals to increase the suite of powers available to PIRC would affect both PIRC and Police Scotland, giving PIRC the ability to call in complaints and review policy and practice, as well as requiring Police Scotland to act in response to PIRC recommendations.

4.1.8 Agreeing changes to primary legislation to allow PIRC to investigate the actions of officers from PSNI and English and Welsh police forces would require further discussion with the UK Government and Northern Ireland Executive around potential changes to UK legislation which would allow PIRC to investigate officers from other jurisdictions, as well as reciprocal arrangements to cover Police Scotland officers operating in those jurisdictions. Impacts on groups affected will be assessed once options have been identified.

4.1.9 Changes to gross misconduct processes would affect serving, former and future police officers in Scotland as well as PIRC, Police Scotland and SPA staff. It will also affect the general public in terms of public confidence in policing, as well as individual complainers and victims of or witnesses to police misconduct.

4.1.10 Proposals to strengthen legislation around vexatious complainers and complaints would primarily affect police officers and members of the public who make a complaint about the police.

4.1.11 Proposals to issue statutory guidance relating to Reflective Practice Review Processes will impact Police Scotland and individual police officers, as well as other policing bodies which will have to take into account any statutory guidance issued by Scottish Ministers.

4.1.12 If other proposed changes to legislation around conduct processes were to change, processes and guidance would also need to be updated in various policing bodies (Police Scotland, SPA, PIRC).

5. Benefits

5.1 The benefits of individual options or approaches to each of the recommendations is outlined in Section 4 above.

6. Costs

6.1 As with the outline of recommendations above, the cost implications of many of the proposals will be conditional on the options selected following the public consultation. A fuller analysis of costs will be provided in the final BRIA and Financial Memorandum accompanying the Bill.

6.2 While there are no identified direct costs to putting the Code of Ethics in statute, there are likely to be indirect costs to the process of consulting on and finalising the Code should it be a legal requirement to do so would be on whoever, particularly in the form of resourcing costs. In light of responses to the consultation, some considerations will include whether consultation on the Code should be required in statute and who should be consulted. Requiring consultation would represent a resource cost to the organisation which would have to run the consultation and analyse responses.

6.3 Adding the PIRC to the list of prescribed persons in The Public Interest Disclosure (prescribed persons) Order 2014 would not have direct costs, but this provision if implemented following public consultation will require PIRC to set up and test new processes around the independent investigation of whistleblowing complaints.

6.4 Allowing bereaved families to have access to free legal representation in Article 2 cases is intended to increase equality of access to participation in the FAI process. The likely costs of the additional legal aid funding are anticipated to be small, as set out in the Legal Aid Impact Test section at paragraph 12.3. The consultation proposes an option regarding allowing families or common interest groups to be considered collectively for legal aid, which would advance this aim while mitigating the impact on public finances.

6.5 It is not anticipated that there would be any additional costs associated with clarifying the definition of a 'person serving with the police'. Indeed, there could be cost savings, in that it would remove the need for twin track investigations of incidents involving both serving and former officers by PIRC and Police Scotland or another force, minimising duplication and enhancing investigatory independence. Some resources would be required on the part of operational partners to update their internal guidance and processes as a result of this clarification but the resultant changes should simplify handling and procedures for all parties.

6.6 Creating an enabling power for PIRC staff to access Police Scotland's complaints and conduct database would not have direct costs. However, use of this power could lead to additional information technology costs for partners, for example PIRC staff purchasing and downloading the necessary software. The Centurion software is provided by Force Information Systems (FIS).

6.7 Additional powers proposed for PIRC including the power to call in the investigation of a complaint, the statutory power to make recommendations, the power to investigate a practice or policy of Police Scotland, and the power to investigate the actions of officers from other police forces, would not require direct additional costs, but use of these powers could lead to additional resourcing and training costs for the PIRC.

6.8 The re-designation of the PIRC as a commission would involve a requirement for the creation of additional staffing posts, including the creation of two Deputy Commissioner posts. Additionally, the additional accountability requirement on the PIRC would likely require dedicated resource.

6.9 In terms of changes to the conduct framework, most costs would fall on Police Scotland, although misconduct allegations against senior officers would also have potential cost implications for the SPA and PIRC, and there could be wider costs if changes led to greater demand for legal representation or introduced different panel requirements.

6.10 There has also been a reduction in the number of gross misconduct hearings in recent years with 25 in 2017 down to 9 in 2020. This may in part be due to the steps Police Scotland has taken in light of Dame Elish's findings that suggested an overreliance on disciplinary systems when HR grievance procedures or mediation would have been more appropriate. It may also be related to a corresponding increase in the number of officers resigning before hearings, rising from 2 in 2017 to 15 in 2020.

6.11 With regards to the proposed continuation of gross misconduct hearings after an officer has left the force, there can be significant resource costs associated with gross misconduct hearings, both in terms of preparatory investigation and in the hearing process itself. While costs of the investigation and preparation of a case would still be incurred, costs of the hearing process are not if an officer retires before that point. The ultimate sanction – dismissal from the force – is not possible in the case of officers having already left through resignation or retirement and this could limit the possible benefits relative to the costs. However, there are clear non-monetary benefits to this policy, particularly in terms of public confidence in policing and, when taken together with the adoption of barred and advisory lists, ensuring that people who are not suited to be police officers are unable to continue working in policing.

6.12 There are potential economic impacts on police officers placed on the Barred and Advisory lists if they are fully adopted (in other words, that Scotland enters into a reciprocal agreement and uses the lists exactly as they currently function, as opposed to developing an agreement to share some information). Given that the Barred list is unpublished but has a publicly searchable version about constables and special officers who have been 'struck off', this information could be obtained by future employers outside of policing as well as by members of the public.

6.13 Making gross misconduct hearings public, changing the composition of gross misconduct hearing panels to include legally-qualified chairs and ensuring that the outcome of gross misconduct hearings are to be made public are all likely to have significant resource implications, including:

- Misconduct and gross misconduct hearings are currently held in private and Police Scotland offices may be used. If these misconduct hearings were to be held in public, suitable public rooms, of adequate size to accommodate members of the public, would be required.
- Additional security requirements may be required if hearings are open to the public, or additional resource requirements for Police staff (with regards administrative processes around members of the public attending hearings).
- Given that Chairs for these hearings are currently internal to the organisation, appointing legally-qualified chairs could represent a significant

additional cost. An alternative option – that the hearings are chaired by HR professionals, would reduce this cost.

- There is likely to be an additional resource implication associated with maintaining and ensuring the accuracy of public notices of gross misconduct proceedings.

As for continuing of gross misconduct proceedings after an officer has left, as discussed at paragraph 7.7 above, there are, however, significant non-monetary benefits to these policies, including increased transparency, rigour and public confidence.

6.14 Operational partners report that significant resources can be required when dealing with vexatious complaints and repeat vexatious complainers. If legislation were amended to cover this aspect, it may help to reduce the volume of such complaints, though resource would still be needed to assess the extent to which a complaint met specified criteria. For PIRC, there may be some additional resource cost associated with the requirement for consideration of the potentially vexatious/malicious nature of complaints against senior officers, although SPA has already made revisions to its Senior Officer Conduct Guidance to address this and the transfer of the preliminary assessment function would simply transfer costs from SPA to PIRC as highlighted below.

6.15 Moving parts of senior officer misconduct proceedings to PIRC would have resources costs in terms of new training, procedures and staff time. However, given the low number of senior officers in Scotland and the rarity of allegations against these individuals, the costs are anticipated to be limited and there should be a corresponding reduction in costs for the SPA.

6.16 While there may be some costs associated with accelerated misconduct hearings, for example resource costs changing procedures and training in light of this proposed change, it is anticipated that overall, resource costs would be a lowered as a result of this provision.

6.17 The costs associated with PAT are currently a fee of £469 per day for a chairing member, and a legal member is paid £328. This does not include the administrative costs of running a tribunal. There will be reduced costs for those who currently consider the internal route.

6.18 There would be some resource costs to the Scottish Government associated with the preparation, consultation on and issuing of statutory guidance.

6.19 Other provisions included in the full public consultation are unlikely to result in direct costs or increases in costs.

7. Scottish Firms Impact Test

A Scottish Firms Impact Test is not currently required for this policy.

8. Competition Assessment

A competition assessment is not currently required for this policy.

9. Consumer Assessment

A consumer assessment is not currently required for this policy.

10. Test run of business forms

It is not anticipated that any new business forms will be introduced as a result of the measures proposed.

11. Digital Impact Test

With the exception of the provision relating to Police Scotland's complaints and conduct database, there are no measures which will have an impact on or be impacted by technology and technological advances. Consideration will be given in the development of the policy regarding access to the complaints and conduct database to ensure that the policy delivery is not limited to the technology currently in use.

12. Legal Aid Impact Test

12.1 Giving Police Scotland's Code of Ethics a basis in statute could potentially create a new responsibility at an organisational level in that it would be a legal requirement that the Code of Ethics be drafted, consulted upon and finalised. While the individual responsibilities within the code which are placed upon police officers would, should the provision be implemented as described, not be set out in law, the perception of the Code as a statutory obligation could lead to increased challenge from complainants or those who feel they have not been treated according to the Code in their interaction(s) with the police.

Introducing a statutory duty of candour would require police officers to assist in the case of an investigation into misconduct issues, however in criminal cases officers' rights under Article 6 of the ECHR would be engaged. In situations where it is unclear whether a misconduct proceeding could become a criminal investigation (currently this would involve Police Scotland referring the case to the COPFS's specialist unit, CAAP-D), the status of the officer (as witness, subject or accused) may be unclear and legal assistance would be required and likely advised by Staff Association representatives. It is therefore possible that in a limited number of cases this provision could cause an increase in the number of people seeking legal assistance. It is worth noting that Police Scotland has already developed and deployed revised Post Incident Procedures, successfully, to strengthen the integrity of the independent investigations, and new statutory duties would further complement the steps taken.

12.2 As in the case of the statutory duty of candour (above), it is possible that in a limited number of cases where a duty of co-operation would compel a police officer to co-operate with an investigation where they otherwise wouldn't have done (for example, due to concerns about their status), this could cause an increase in people seeking legal assistance where the status of the officer(s) concerned is unclear.

12.3 Giving bereaved families access to free legal representation in Article 2 cases, where a person has died in police custody or following police contact, could

have a significant impact on the provision of legal aid. The benefits of this measure is intended to be increased equality of access to participation in the FAI process but important to note the context for this proposal which relates to deaths in police custody or following police contact, which lead to a relatively few FAIs in Scotland. Allowing families or common interest groups to be considered collectively for legal aid would advance this aim while mitigating the impact on public finances.

Legal Aid payments are set by the Scottish Government and administered by the Scottish Legal Aid Board. Means and merits tests must be met, and applying the means test can mean that some applicants are currently required to contribute to their legal representation. However this contribution is costed at a lower rate than would be charged as a private client. The cost will also be limited by the number of requests for legal aid that are received by the Scottish Legal Aid Board (SLAB): since 2012 (which is the first year from which SLAB holds data) there has been a total of 134 applications received, of which 111 were granted. These figures are for all FAIs, for any sudden, unexpected or unexplained death or a death that has occurred in circumstances that could lead to public concern, not just those in police custody.

There is a possibility that the number of applications would increase slightly if legal aid funding were guaranteed for families in Article 2 cases involving the police, as it is not known how many families do not apply for funding due to a belief that they would not be eligible according to the current means-tested system.

12.4 It is possible that the full adoption of the UK Barred and Advisory Lists, and their utilisation in the same manner as is currently exercised in England and Wales, could lead to an increase in the number of people seeking legal aid. This is because the information in both lists could be shared between jurisdictions, and information contained on the Barred list could potentially be shared with future employers (including employers outside policing). Any challenge to the disclosure of information on the Barred list could lead to an increase in the use of legal aid. Furthermore, whereas serving police officers are often represented in misconduct and gross misconduct hearings by Staff Associations, former officers challenging their status on the Barred list would not have this option and may therefore utilise legal services.

12.5 Continuation of the appeals process through PAT as the **only** route for appeal (against a determination of Gross Misconduct) after the PAT's transfer to the Scottish Tribunals is unlikely to directly increase the number of people seeking legal aid.

12.6 The proposed changes to the gross misconduct process, particularly the appointment of legally-qualified chairs and the holding of gross misconduct hearings in public, could lead to an increase in the number of officers accused of actions amounting to gross misconduct who seek legal advice, and, as a consequence, legal aid.

Stakeholders have noted that there introducing a legally-qualified chair could significantly change the 'tone' of the hearings, which ultimately deal with employment issues (alleged criminal conduct is not investigated through the

misconduct process), and may lead subject officers to seek additional advice, beyond the support currently available through staff associations.

Additionally, the public nature of misconduct hearings if the above measures are implemented may also lead officers to seek additional advice and representation.

12.7 A provision to allow joint misconduct hearings is unlikely to directly give rise to any increase in people seeking legal assistance. However, adequate safeguards would require to be put in place to ensure that individual officers – particularly more junior officers appearing with (a) senior officer(s) at a misconduct hearing – are not subject to disciplinary penalties beyond those prescribed in the conduct regulations for their rank. Failure to do so may result in those penalties – particularly dismissal – being legally challenged, resulting in a potential increase in demand for legal aid.

12.8 Amending regulations to allow a ‘fair and speedy’ consideration of any allegation of misconduct to be dealt with during the probation period rise to an increase in the use of legal aid and in legal challenges to dismissal in particular. Dismissal of probationers has already led to legal challenge.

12.9 Additional provisions included in the full public consultation are unlikely to have direct impacts on the provision of legal aid.

Enforcement, sanctions and monitoring

The Scottish Government will work with operational partners to monitor the impact of these measures.

Implementation and delivery plan

The consultation will run for 12 weeks and will inform policy development ahead of a Bill and Regulations.

Summary and recommendation

A summary of costs and benefits will be set out in the final BRIA for this policy.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed 

Date: 18/05/2022

Minister's name: Keith Brown

Minister's title: Cabinet Secretary for Justice and Veterans

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