

# **Police Complaints, Investigations and Misconduct: Analysis of Consultation on Legislation**

November 2022

# **Police Complaints, Investigations and Misconduct:**

## Analysis of Consultation on Legislation

This is an independent analysis by Alma Economics  
commissioned by the Scottish Government.

### **About the authors**



Alma Economics combines unparalleled analytical expertise with the ability to communicate complex ideas clearly.

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# 1 Executive summary

## 1.1 Purpose of this document

This document has been prepared by Alma Economics on behalf of the Scottish Government and provides an analysis of the responses to the Scottish Government's consultation on police complaints, investigations and misconduct<sup>1</sup>. This consultation invited views on the recommended improvements proposed by Dame Elish Angiolini following her independent review of complaints handling, investigations and misconduct issues in relation to policing<sup>2</sup>. The invitation for responses to the consultation closed on 16 August 2022. This document summarises the views expressed in the responses to the consultation.

## 1.2 Summary of findings

The consultation received 55 responses, 33 of which came from individuals and 22 came from individuals on behalf of organisations.

Overall, the responses to the consultation were broadly in favour of the recommendations. Respondents generally expressed support for recommendations that would promote greater transparency and impartiality in policing. This included support for the members of the public to be included in any oversight, investigation or review bodies, while excluding those with a policing background. This was on the basis that many respondents considered it necessary to improve impartiality and public confidence in the processes. There was also broad consensus for clarifying police responsibilities and standards, such as with a statutory Code of Ethics and duties of candour and co-operation.

The level of agreement among respondents was more nuanced for questions relating to practical steps to implement the recommendations. For example, there was relatively less consensus on which organisation should review and audit police complaints, processes and practices.

There was occasionally a divide in opinion between responses provided by individuals versus those representing organisations. Typically, responses by individuals were in favour of recommendations which promoted public transparency, visibility and impartiality of oversight processes. For instance, many individuals emphasised the importance of an independent oversight organisation to maintain standards in policing and believed that this should not be the Police Investigations and Review Commissioner (PIRC). Although responses by organisations also supported these themes, they tended to be in favour of placing limits on the extent of public or external

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<sup>1</sup> Police Complaints, Investigations and Misconduct: A Consultation on Legislation (Scottish Government, 2022), <https://www.gov.scot/publications/police-complaints-investigations-misconduct-consultation-legislation/>

<sup>2</sup> Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing (Dame Elish Angiolini, 2020), <https://www.gov.scot/publications/independent-review-complaints-handling-investigations-misconduct-issues-relation-policing/>

involvement in resolving policing issues. This was on the basis that, as suggested by some organisations, the police face unique challenges which must be understood by those familiar with such matters in order to ensure a fair process.

The following sections summarise the findings of the consultation responses for each group of recommendations.

### **1.2.1 Rights and Ethics**

In summary, there was general agreement with recommendations regarding rights and ethics. There was broad agreement that there should be a statutory requirement for Police Scotland to have a Code of Ethics, which can be amended as necessary. Respondents also agreed the party responsible for preparing the Code of Ethics should be required to consult on it. Respondents reasoned that a Code of Ethics would emphasise the importance of ethical values within Police Scotland and remove ambiguity associated with policing standards. However, consensus was less clear regarding who should be responsible for preparing the code. Responses on behalf of organisations suggested that this should be a joint responsibility between the Chief Constable and the Scottish Police Authority (SPA), while responses from individuals stated that this should be done by a different organisation, which some specified should be an independent body.

These findings were also consistent with the views expressed towards the duty of candour and the duty of co-operation. Respondents generally agreed that these duties should be statutory and extended for former officers and staff. Where statutory duty of candour is placed on the police, respondents broadly disagreed that this should relate to incidents involving on-duty officers only. However, there was mixed agreement on whether the duties should only apply when an officer's status as a witness has been confirmed, with organisations more likely to agree and individuals more likely to disagree with this recommendation. There was general agreement that the PIRC should have a statutory power to compel officers to attend interviews within a reasonable timescale set in legislation and that the Scottish Government should consider making amendments to the constable's declaration and the Standards of Professional Behaviour to reflect these obligations.

There was a consensus that people working within Police Scotland and the SPA should be able to raise wrongdoing concerns with an independent third-party police oversight organisation. There was less agreement on whether the oversight organisation should be the PIRC or an independent third-party. Organisations tended to favour the former, while individuals were more likely to prefer an independent third-party on the basis that they believed the PIRC would not be sufficiently impartial for this responsibility.

Most respondents agreed that legal aid should be available to all families of people who die in police custody or following police contact regardless of their ability to pay. Some respondents argued against means testing the provision of legal aid, on the basis that there should not be a financial barrier for people seeking legal representation and that means testing could be unfair and intrusive.

There was also general agreement for recommendations which would clarify the scope of investigatory powers. Most respondents agreed that the PIRC's powers to investigate an incident involving the death of a serving police officer should be clarified. Furthermore, respondents agreed that the definition of "person serving with the police" should be clarified, with some respondents in favour of extending the definition to include retired, resigned and off-duty officers. Most respondents also agreed that the term "a member of the public" should be clarified and make clear that it includes a serving police officer who is off-duty at the time of an incident.

## **1.2.2 Governance, Jurisdiction and Powers**

In summary, there was general agreement with the recommendations regarding changes to the PIRC structure. Most respondents agreed that the PIRC should be re-designated as a Commission, with some respondents suggesting that this would improve the impartiality and status of the PIRC. There was also agreement that two Deputy Commissioners should be appointed, with some respondents suggesting that they should be required to have legal knowledge. In the interest of maintaining impartiality, several respondents suggested that former police officers and staff should be excluded from being appointed as Deputy Commissioners. Most respondents agreed that a statutory Board should be created, although agreement among organisations was mixed.

Respondents were broadly in favour of the recommendation that the appointment of the PIRC should be made by nomination of the Scottish Parliament rather than remain a Scottish Ministerial appointment. There was also a split in opinion on whether the PIRC should be made by Royal appointment. Responses from individuals were more likely to disagree with this recommendation while responses on behalf of organisations were more inclined to agree. There was clearer consensus that the accountability arrangements should transfer to the Scottish Parliament.

There was agreement that the PIRC should be able to access Police Scotland's complaints and conduct database remotely, with many respondents reasoning that this would enable them to improve the accuracy and efficiency of investigations. Several respondents also suggested that this access should be subject to appropriate safeguards and limits to ensure that any data protection concerns are addressed.

Respondents agreed that the PIRC should be given a statutory power to call in an investigation of complaints, practices, or policies of Police Scotland. Although most respondents agreed that the scope of these investigatory powers into Police Scotland practices and policies should be unrestricted, some respondents were concerned that this could result in an unnecessary number of investigations. Most respondents agreed that Police Scotland or other policing bodies should be required to respond and act on recommendations following a complaint handling review or audit. Most respondents who shared this view believed that this would improve transparency and public confidence in complaint handling. Lastly, the recommendation regarding cross-jurisdictional issues was broadly supported by respondents.

### **1.2.3 Conduct and Standards**

In summary, there was general agreement with the recommendations regarding conduct and standards. A majority of respondents agreed that gross misconduct hearings should be held in public and should be applicable for all ranks of officers to promote transparency and public confidence. However, this view tended to be shared among individuals, while there was less consensus among organisations.

Just over half of respondents suggested that the Chair of the gross misconduct hearing should have discretion in restricting attendance as they see appropriate, such as to protect vulnerable victims and to maintain a fair and unobstructed hearings process. In addition, there was broad consensus that evidence provided by vulnerable witnesses should be heard in private to ensure their protection.

There was consensus that the outcomes of gross misconduct proceedings should be made public and that a finding of gross misconduct should always result in dismissal unless there are exceptional circumstances to justify an alternative sanction.

In terms of the composition of gross misconduct hearing panels, respondents suggested that the Chair of these hearings should be an independent legally qualified person, while the hearing panel should also include an independent legally qualified person and an independent lay person. Respondents typically argued that panels should not include members of the police as there was a concern that such members could not be impartial. These views were consistent for hearing panels involving gross misconduct for all ranks of officer.

Most respondents agreed that it should be possible to begin and continue gross misconduct proceedings against former officers of any rank after they have left the service, including after 12 months under certain circumstances, although there was less consensus regarding who should be responsible for making this decision. However, some respondents argued that this recommendation is not proportional or consistent with practices in non-policing organisations. There was broad agreement that the Scottish Government should work with the UK Government to adopt the Barred and Advisory Lists model.

There was support for recommendations relating to appeals against determinations of gross misconduct. There was also agreement for accelerated misconduct hearings, subject to the right circumstances and the availability of interconvertible evidence. Respondents also agreed that the preliminary assessment function should be moved from the SPA to the PIRC. Most respondents agreed that the PIRC should be able to present a case at a senior officer's gross misconduct hearing and an independent legally chaired panel should have the capacity to hold a preliminary hearing to identify any evidence that is not in dispute.

Respondents generally agreed that the PIRC should take on responsibility for key aspects of senior officer gross misconduct proceedings and have the power to recommend the suspension of a senior officer if necessary. However, there was a marginal consensus among respondents that suspension should only be considered in circumstances when not suspending an officer may prejudice an effective

misconduct investigation.

Most respondents agreed with the recommendations relating to vexatious complainers across policing bodies. Some respondents argued that there is need for robust and proportionate processes to determine whether a complaint is vexatious, such as to prevent the mislabelling of potentially valid complaints as vexatious. Lastly, there was clear consensus that the conduct regulations for special constables should be revised to be brought in line with those for regular police officers.

### **1.2.4 Liability for unlawful conduct**

In summary, there was agreement with the recommendation on liability for unlawful conduct. There was consensus among respondents that liability for unlawful conduct should be extended to cover the rank of Chief Constable. Respondents argued this would ensure that victims are protected and that the Chief Constable would be treated equally as any other officer.



## 2 Introduction

### 2.1 Background and context for the consultation

This report concerns the analysis of responses to the public consultation on the recommendations made by Dame Elish Angiolini following her independent review of complaints handling, investigations and misconduct issues in relation to policing.<sup>3</sup> Through her preliminary report<sup>4</sup> (June 2019) and final report (November 2020), Dame Elish made 111 individual recommendations, 34 of which are likely to require legislation. The Scottish Government and Crown Office committed to accepting the majority of the recommendations in the joint response to Dame Elish's final report by the former Lord Advocate and former Cabinet Secretary for Justice in February 2021<sup>5</sup>.

According to the third thematic progress report published in June 2022, 44 of the non-legislative recommendations have already been implemented, although some recommendations have been identified as likely to require a basis in primary or secondary legislation to be affected in full.<sup>6</sup> The Scottish Government launched a public consultation on 24 May 2022 aiming to collect the views and opinions on the recommendations which are likely to require legislative change. The views and opinions contained within the responses may therefore inform the Scottish Government's policy decisions on the implementation of these recommendations<sup>7</sup>.

### 2.2 Consultation structure and format

The Scottish Government's online consultation on legislative proposals for reform of police complaints, investigations and misconduct was hosted on the Scottish Government's Citizen Space portal and consisted of 111 closed-format and 56 open-format free-text questions. The Scottish Government also accepted responses provided via email or post. The consultation opened on 24 May and closed on 16 August 2022. Questions were organised under areas of recommended changes to the legislation, which were grouped under four broad sections:

- **Section 1** considered the recommendations which seek to clarify or strengthen existing legislation around the rights of members of the public and police officers. It also asked for views on the responsibilities of police officers during investigations

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<sup>3</sup> Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing (Dame Elish Angiolini, 2020): <https://www.gov.scot/publications/independent-review-complaints-handling-investigations-misconduct-issues-relation-policing/>

<sup>4</sup> Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing - Preliminary Report (Dame Elish Angiolini, 2019): <https://www.gov.scot/publications/preliminary-report-independent-review-complaints-handling-investigations-misconduct-issues-relation-policing/>

<sup>5</sup> Response from the Scottish Government and Crown Office to the Independent Review (Cabinet Secretary for Justice and Lord Advocate, 2021): [https://archive2021.parliament.scot/S5\\_JusticeCommittee/Inquiries/20210205\\_SG\\_COPFS\\_Response.pdf](https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/20210205_SG_COPFS_Response.pdf)

<sup>6</sup> Implementation of Recommendations: Thematic Progress Report (Scottish Government, 2022): <https://www.gov.scot/publications/complaints-investigations-misconduct-policing-implementation-recommendations-thematic-progress-report-june-2022/>

<sup>7</sup> Police Complaints, Investigations and Misconduct: A Consultation on Legislation (Scottish Government, 2022). See: <https://www.gov.scot/publications/police-complaints-investigations-misconduct-consultation-legislation/>

as well as on Police Scotland's Code of Ethics.

- **Section 2** asked for views on proposed changes to the governance and jurisdiction of, and additional powers for, the Police Investigations and Review Commissioner (PIRC).
- **Section 3** sought views on conduct and standards as well as other measures regarding disciplinary and grievance procedures.
- **Section 4** requested views on clarifying the liability for unlawful conduct in relation to the Chief Constable.

Respondents were advised that they did not have to answer all questions, with respondents being welcome to respond only to the questions and sections of the report that are relevant to them. A full list of the consultation questions mapped to each area of recommended legislative change is summarised in Appendix A.

## **2.3 About this report**

This report has been prepared by Alma Economics on behalf of the Scottish Government and provides an independent analysis of responses to the Scottish Government's consultation on police complaints, investigations and misconduct.

## 3 Methodology

### 3.1 Data processing

At the start of the consultation analysis, the responses extracted from the Citizen Space portal, as well as the responses provided by email and post that mirrored the format of the consultation questionnaire, were merged into a single dataset. All responses were treated equally regardless of how they were submitted. During the manual review of responses, the research team screened responses for those that were part of an organised campaign or that were clearly intended as offensive, abusive or explicitly vulgar. No responses were removed as a result of this screening.

The consultation also received responses by email or post which did not follow the prescribed question format and did not always refer to specific recommendations. These responses were submitted on behalf of organisations except one which outlined the comments raised during the engagement events. Given that some of these responses could not be directly mapped to specific consultation questions or recommendations, the insights raised have been summarised and reported on separately in section 4.6 of this report. In some cases, due to the non-standard nature of these responses, some may not be accurately reflected in the breakdowns of the totals in the quantitative analysis.

### 3.2 Approach to analysis of open-form questions

The consultation included 56 open-format questions with free-text fields, and there was no limit to the amount of text which respondents could write in their answers. All responses to the open-text questions were read in full by our team of researchers, with thematic analysis of each response being conducted to capture the main opinions expressed by respondents in over-arching themes as well as to understand the reasoning behind answers. As part of our analysis, we also extracted any practical recommendations made by respondents relating to the design and implementation of the legislation.

Responses to the consultation differed in depth and approach, and while many responses included evidence to back up opinions, other responses primarily expressed preferences, concerns or expectations without further analysis. Our approach to handling these differences involved:

- Capturing the main idea regardless of whether it was expressed as a personal view or if evidence was provided to sustain the argument.
- Including every response in the analysis, reading beyond grammar or spelling mistakes and capturing the main idea regardless of difficulty in distilling the information.

Supplementary quotes from respondents have been used in the report to support many of the highlighted themes and views raised in response to the questions raised in this consultation. The quotes used are generally intended to be representative of themes or views raised by multiple respondents, unless otherwise stated.

### **3.3 Approach to analysis of closed-form questions**

Descriptive analysis was conducted on the 111 closed-format questions based on the frequency at which each of the multiple-choice options were selected. The main body of the report summarises in narrative form the distribution of responses across each option. Segmentation analysis of each closed-format question is also detailed in Appendix B, broken down by if the individual is responding on behalf of themselves as an individual or on behalf of an organisation, thus highlighting where responses may differ depending on the type of respondent.

## 4 Findings from the consultation analysis

This chapter summarises the key findings from the analysis of the responses to the consultation and is divided into the following sub-sections:

- **4.1** describes the key characteristics of the consultation respondent base and a breakdown of the channels through which responses were submitted.
- **4.2 to 4.5** provide a summary of the key findings from the structured responses to the consultation. This sub-section is organised to mirror the structure of the consultation document. For each of the recommended areas of legislative change, a summary of qualitative and quantitative analysis is presented, depending on the nature of the question (open questions versus closed questions).
- **4.6** provides a summary of key themes and perspectives from the responses received through email or post which do not refer to specific consultation questions or recommendations.

### 4.1 Profile of respondents

Respondents to the consultation indicated in their response if they were responding as an individual or as an individual on behalf of an organisation. The breakdown of respondents across these segments is summarised in the table below:

Response basis	Number of respondents	Percentage
Individual	33	60%
Organisation	22	40%
<b>Total</b>	<b>55</b>	

As mentioned in the previous section, respondents were able to submit their responses either through the Citizen Space online portal or through other channels (email and post). Respondents who submitted their responses through other channels provided either structured responses (following the original structure of the consultation document) or unstructured responses. The breakdown of responses by submission channel is summarised in the table below:

Response channel	Number of respondents	Percentage
Citizen Space	39	71%
Email or post (structured)	7	13%
Email or post (unstructured)	9	16%
<b>Total</b>	<b>55</b>	

Further details on the volume of responses by question can be found in Appendix B.

The following sections provide analysis of prominent themes and suggested recommendations identified in the quantitative and qualitative analysis of structured responses to the consultation (i.e., responses that followed the original structure of the consultation document). The analysis has been organised according to recommendations of legislative change which were consulted upon (see Appendix A for a full list of the proposed areas of legislative change). For each recommendation, the following sections summarise the recommendation, provides an overview of key findings from the consultation responses and states any suggestions made by respondents that could be useful for further policy development.

## 4.2 Rights and ethics

This section sets out the proposals to address Dame Elish Angiolini's recommendations that relate to rights and ethics. The proposals touch upon issues of fairness, transparency and access to justice. This includes suggestions to strengthen Police Scotland's existing Code of Ethics, clarifying officers' duties in investigations of serious incidents and ensuring there are clear routes for whistleblowing.

### 4.2.1 Code of ethics (1.1A to 1.1H)

#### Recommendation

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**“Police Scotland’s Code of Ethics should be given a basis in statute. The Scottish Police Authority and the Chief Constable should have a duty jointly to prepare, consult widely on, and publish the Code of Ethics, and have a power to revise the Code when necessary.” (Recommendation 1, p. 455)**

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#### Overview of responses

Out of 44 respondents, 36 agreed that there should be a statutory requirement for Police Scotland to have a Code of Ethics. Furthermore, most respondents (35 out of 42) agreed that it should be possible to amend and/or update such a code when required. Of the respondents that provided further information, some reasoned that this would ensure that an ethical standard of behaviour is upheld, emphasising the importance of these values within Police Scotland, and that it would also remove ambiguity regarding the standard of conduct expected.

“Enshrining this requirement in legislation will ensure that future Chief Constables and command teams work within a strong ethical framework and that the Police Service of Scotland continues to be recognised for its approach being based on human rights.”

“Putting this into statute would ensure the Code of Ethics gets the focus and importance it deserves and would ensure it is aligned to the Standards of Professional Behaviour.”

“By having and adhering to a code of ethics, everyone within Policing knows what is expected of them and can challenge colleagues irrespective of their rank and position.”

Several different arguments were provided by respondents who disagreed with the recommendation, with some reasoning that current policies are sufficient, that the Code of Ethics would increase bureaucracy and that the police should not need a statutory obligation to behave ethically.

“There is already a Code of Ethics that the police can follow. Those who conduct themselves accordingly without needing it to be statute are the people who are best suited to the job of policing...”

Respondents were primarily split between suggesting that a different organisation should be responsible for preparing the Code of Ethics and that the Chief Constable and the Scottish Police Authority (SPA) should be jointly responsible. The former

suggestion was favoured by responses from individuals (out of the 20 that chose this option, 19 were individuals and 1 was an organisation), while the latter suggestion was favoured by organisations (out of the 16 that chose this option, 8 were individuals and 8 were organisations). Of the respondents that stated that a different party should be responsible, the most common suggestion was that this should be an independent party. Some respondents specified that while policing bodies can be consulted, they should not be involved in drafting the Code of Ethics.

“None of the above as they are all part of the same system. People who are wholly independent and have no conflict or vested interest.”

“Whilst I see no issue of the Chief and SPA having an input it cannot be left to them solely, to do so would be a waste of time, and a process which they could then control, and dismiss, if necessary.”

The vast majority of respondents (37 out of 43) agreed that the responsible party should be required to consult on the Code of Ethics. Many specified that they should be required to conduct a public consultation, while some suggested that the consultation should be accessible to all, well-advertised and conducted independently. A few respondents highlighted that individuals who have had negative experiences of policing should be consulted.

“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.”

“A public consultation may seem cumbersome but it will get maximum eyes on the proposal.”

“The Code of Ethics should be developed following extensive consultation and particularly reflecting the views of people who have experienced / from communities at risk of experiencing negative impacts of policing as explored in Dame Elish Angiolini’s report.”

The majority of respondents agreed that the body responsible for preparing a Code of Ethics should also be responsible for publishing it.

### **Recommendations suggested by respondents**

No further suggestions were provided by respondents.



## 4.2.2 Duty of candour (1.2A to 1.2D)

### Recommendation

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**“The Scottish Government should propose amendment of the Police and Fire Reform (Scotland) Act 2012 to the following effect: There should be an explicit duty of candour on the police to co-operate fully with all investigations into allegations against its officers.” (Recommendation 10, p. 456)**

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### Overview of responses

The majority of respondents agreed 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 (out of 42 respondents, 29 agreed strongly while 7 agreed). There was also agreement among most respondents that this duty should be placed on both Police Scotland as an organisation as well as on individual officers. Furthermore, most respondents disagreed that the duty should relate only to incidents involving on-duty officers. Overall, respondents were roughly split between agreeing and disagreeing with the suggestion that the statutory duty of candour should apply only when an officer’s status as a witness has been confirmed (out of 43 respondents, 21 agreed while 19 disagreed). Responses from individuals were more likely to disagree (15 disagreed while 12 agreed) while responses from organisations were more likely to agree (9 agreed while 4 disagreed).

### Recommendations suggested by respondents

No further suggestions were provided by respondents.

## 4.2.3 Duty of co-operation (1.2E to 1.2I)

### Recommendation

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**“The Scottish Government should consult on a statutory duty of co-operation to be included in both sets, or any future combined set, of conduct regulations as follows: ‘Constables have a duty to assist during investigations, inquiries and formal proceedings, participating openly, promptly and professionally in line with the expectations of a police officer when identified as a witness.’”**  
**(Recommendation 12, p. 456)**

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### Overview of responses

Out of 42 respondents, 33 agreed that police officers should have a statutory duty of co-operation to assist during investigations, inquiries and formal proceedings. The majority of respondents also agreed that such a duty should apply to former police officers as well as current and former police staff. Responses from organisations were more likely to be split between agreeing and disagreeing that the duty should apply to former police officers and staff. It was also suggested that police officers should be required to participate ‘openly’ and ‘promptly’ by most respondents. Where further comments were provided, a few respondents suggested that officers should be required to participate honestly, while some emphasised that it would be necessary to confirm their status as a witness first.

“Officers should be required to participate honestly”

“Officers and staff should have a duty of candour and cooperation once their status as a witness has been confirmed and notified to them by the investigating body.”

“The duty should apply only to those whose status as a witness has been confirmed.”

Furthermore, 26 out of 42 respondents disagreed that a statutory duty of co-operation should only relate to incidents involving on-duty police officers. Responses on behalf of organisations were slightly more likely to disagree (10 respondents disagreed, while 3 agreed) compared to responses provided by individuals (16 respondents disagreed, while 9 agreed).

### Recommendations suggested by respondents

No further suggestions were provided by respondents.

## 4.2.4 PIRC power to compel officers to interview (1.2J to 1.2K)

### **Recommendation**

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**“Where a serious incident is being investigated by the PIRC, the investigators should also have a power, where it is necessary and proportionate, to compel police officers to attend within a reasonable timescale for interview.”**

**(Preliminary Recommendation 15, p. 474 of final report)**

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### **Overview of responses**

Most respondents agreed that the PIRC should have the statutory power to compel officers to attend for interview within a reasonable timescale (36 out of 43 respondents). Furthermore, they agreed that the reasonable timescale should be set in legislation.

### **Recommendations suggested by respondents**

No further suggestions were provided by respondents.

## 4.2.5 Additional comments regarding duties of candour and co-operation (1.2L to 1.2N)

### Recommendation

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**This section relates to the recommendations regarding the statutory duties of candour and co-operation.**

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#### Overview of responses

The majority of respondents agreed that the Scottish Government should consider possible amendments to the constable's declaration (31 out of 43 respondents) and the Standards of Professional Behaviour (32 out of 43 respondents) to reflect an obligation to assist with investigations where appropriate.

There was general consensus among responses from individuals, with 22 respondents agreeing 3 disagreeing with the amendment to the constable's declaration, and 23 respondents agreeing and 4 disagreeing amendments to the Standards of Professional Behaviour. There was relatively less consensus among organisations, with 9 respondents agreeing 4 disagreeing with the amendment to the constable's declaration, and 9 respondents agreeing and 3 disagreeing amendments to the Standards of Professional Behaviour.

Of the respondents that provided further comments, the most prominent view expressed was that these duties are necessary to provide clarity in terms of the standard of behaviour that is expected within Police Scotland and that they may also help to ensure that these standards are upheld.

“Where incidents occur which require to be investigated then the public should be given assurances that officers will cooperate with this process...”

“It should be a officers and member of staff primary duty to uphold the highest standards possible with any breach of this punishable”

It was also mentioned that police officers should have the same rights as members of the public. Some respondents argued the importance of protecting the human rights of police officers, while others emphasised that police officers who are suspects in criminal investigations should have the same rights as other suspects.

“An officer should not have less rights than any person they deal with.”

#### Recommendations suggested by respondents

Some respondents emphasised that police officers and members of the public should have the same rights and that they should be treated as such.

## 4.2.6 Whistleblowing (1.3A to 1.3D)

### Recommendation

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**“The Police Investigations and Review Commissioner should be added to the list of prescribed persons in The Public Interest Disclosure (Prescribed Persons) Order 2014 in order that people working in Police Scotland and in the Scottish Police Authority are able to raise their concerns with an independent third-party police oversight organisation.” (Recommendation 20, p. 458)**

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### Overview of responses

In summary, 39 out of 43 respondents agreed that people working in Police Scotland and the Scottish Police Authority should be able to raise their concerns with an independent third-party police oversight organisation. Similarly, most respondents agreed that concerns which have been raised about wrongdoing within policing in Scotland should be audited by an independent organisation (35 out of 41 respondents agreed and 6 disagreed or were unsure).

Respondents were almost evenly split on whether the oversight organisation should be the PIRC or an independent third-party, with responses provided by organisations being more likely to favour the former. For instance, in relation to whistleblowing concerns specifically from within Police Scotland, 20 respondents stated that the oversight organisation should be the PIRC, while 19 stated that it should be a different independent body. Among responses provided by organisations, 9 agreed with the former and 2 agreed with the latter.

Where further comments were provided, many respondents suggested that the PIRC is not sufficiently impartial and some expressed concern that the PIRC employs people with a police background.

“An independent body which does not employ or consult with current or ex-police officers”

“There needs to be another organisation which does not have connections to Police Scotland or The PIRC”

Some respondents emphasised that, regardless of who the oversight organisation is, it needs to be able to provide whistleblowers with legal protection, while some argued it should also have the power to follow up on concerns brought to them.

“This is a good idea in principle however whistleblowers need legal protection from management retaliation most of all. An independent body must be able to offer legal protection as well as powers to investigate and impose penalties.”

### Recommendations suggested by respondents

Some respondents emphasised the importance of the independent third-party oversight organisation having the necessary legal power to act on whistleblowing concerns and provide whistleblowers with protection when bringing concerns to them.

## 4.2.7 Legal Aid in Article 2 cases (1.4A to 1.4D)

### Recommendation

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**“In Article 2 cases, in order to facilitate their effective participation in the whole process, there should be access for the immediate family of the deceased to free, non-means tested legal advice, assistance and representation from the earliest point following the death and throughout the Fatal Accident Inquiry.”**  
(Recommendation 74, p. 468)

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### Overview of responses

Most respondents agreed that legal aid should be available to all families of people who die in police custody or following police contact regardless of their ability to pay (31 out of 40 respondents). Of the respondents that agreed, some argued that this would ensure there is not a financial barrier for people seeking legal representation. Some also argued that means testing of legal aid is unfair, intrusive and unnecessarily places additional stress on families who are grieving.

“Families need legal representation in order to take an active role in this process, which is complicated and unfamiliar to most people. The process for assessing eligibility for legal aid can feel intrusive for bereaved families, adding stress to the process, and worry around whether they will qualify.”

“No, I think it is absolutely ridiculous this is “means tested” and could potentially put off families from seeking appropriate representation.”

Of the respondents that disagreed with the recommendation, some expressed concern that public money could be used to investigate vexatious complaints.

“The public purse should not be expected to continually fund investigations into vociferous allegations where there is no merit...”

Most respondents also agreed that there should be an opportunity for family and common interest groups to receive legal aid funding on a group basis in Article 2 cases (29 agreed while 6 disagreed out of 39 respondents). Of the respondents that provided further information, some emphasised that the entitlement to financial aid should also be extended to police officers, while others expressed support for the funding to be received on a group basis as it may be more cost-effective.

“It would be more cost effective for legal aid to be provided on a group basis where this is appropriate. This option would also be beneficial for families and other groups, to enable them to be represented as a group, streamlining this often lengthy and complicated process, where this is appropriate.”

### Recommendations suggested by respondents

No further suggestions were provided by respondents.

## 4.2.8 Death of a serving police officer (investigation) (1.5A to 1.5B)

### Recommendation

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**“The Review received evidence that [...] sub-section [The Police, Public Order and Criminal Justice (Scotland) Act 2006, section 33A(b)(ii) (Investigation of deaths)] is ambiguous in that it is not clear whether the provision encompasses the death of a serving police officer.” (Misc. recommendation, p. 437)**

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### Overview of responses

Most respondents (22 out of 35) agreed that the existing law regarding the PIRC’s powers to investigate an incident involving the death of a serving police officer should be clarified. Responses from organisations were nearly equally split between agreeing and disagreeing with this recommendation (out of 8 responses from organisations, 5 agreed while 3 disagreed). Of the respondents that elaborated further, some suggested that the definition should be clarified to include deaths of serving police officers and emphasised that everyone should be treated equally.

“It makes sense to provide some clarity around roles and responsibilities in this area and to clear up any ambiguity.”

“it should be everyone including the death of a serving police officer even a fire officer or ambulance what is the difference”

Some respondents expressed doubt that the PIRC should be the body to handle such investigations.

“PIRCs are ex police and in my opinion not impartial”

### Recommendations suggested by respondents

No further suggestions were provided by respondents.

## 4.2.9 Definition of "person serving with the police" (1.6A to 1.6C)

### Recommendation

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**“The Angiolini report recommends putting beyond doubt the definition of a “Person serving with the police” to be clear that it includes a person who, at the time of an incident, was serving with the police, but has since retired or resigned. It also includes officers who were off duty.” (Recommendation 8, p. 456)**

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### Overview of responses

37 out of 43 respondents agreed that the term “person serving with the police” should be more clearly defined. There was consensus among respondents that the definition should clarify whether the PIRC has powers to investigate officers who have since retired or resigned from the service and those who were off duty at the time of an incident.

Where additional comments were provided, most responses reiterated their agreement with the recommendation and specified that the definition should be extended to include these categories of officers. Some respondents reasoned that these officers are still representing the police and should be expected to adhere to ethical standards of conduct in their personal lives.

“Regardless of whether on or off duty, retired or resigned all officers should be treated the same as they still represent the police”

“The responsibility conferred in the undertaking of the position of Police Officer comes with it 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.”

A minority of respondents disagreed and suggested that resigned, retired and off-duty officers should be treated as members of the public given they are no longer with the police.

“Similarly, persons who have retired or resigned should be entitled to a private life. They are unlikely to have access to specialist supports or the legal advice which serving officers and staff have and should be treated like a member of the public in respect of any future PIRC investigations.”

### Recommendations suggested by respondents

No further suggestions were provided by respondents.



## 4.2.10 Definition of "a member of the public" who may make a complaint (1.6D to 1.6F)

### Recommendation

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**“The Scottish Government should consider the case for amending the legislation to put beyond doubt the definition of a member of the public who may make a relevant complaint.” (Preliminary Recommendation 30, p. 477 of final report)**

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### Overview of responses

Out of 42 respondents, 31 agreed that the term “a member of the public” should be defined to make it clear who is able to make a complaint and that the definition should make clear that it includes a serving police officer who is off duty at the time of an incident. Where additional comments were provided, most suggested that the definition should include off-duty police officers and reasoned they should have the same rights as other individuals to make complaints. Some respondents suggested that the treatment of such police officers depends on the complaint circumstances such as how the complaint is made.

“Member of the public should include off duty officers to ensure their is no ambiguity and they should be treated exactly the same way as non members of the police are treated”

“The route by which a complaint is made could be used to determine whether it should be handled as a report by a "Member of the public" rather than as a police officer.”

### Recommendations suggested by respondents

No further suggestions were provided by respondents.

## 4.3 Governance, jurisdiction and powers

This section sets out the proposals to address Dame Elish Angiolini's recommendations that relate to the governance, jurisdiction and powers of the Police Investigations and Review Commissioner (PIRC). These recommendations outline a significant increase in the responsibilities of the PIRC through new powers as well as the strengthening of the PIRC's current accountability and governance structures.

### 4.3.1 Changes to Police Investigations and Review Commissioner (PIRC) structure (2.1A to 2.1H)

#### Recommendation

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**“The 2006 Act should be amended to re-designate PIRC as a Commission comprising one Police Investigations and Review Commissioner and two Deputy Commissioners, to create a statutory Board and to provide for the necessary appointment arrangements. Given the sensitivity of the office of the Commissioner, the role should be strengthened by the appointment of two Deputies with relevant legal expertise or other relevant experience who are not former senior police officers.” (Recommendation 34, p. 461)**

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#### Overview of responses

29 out of 39 respondents agreed that the PIRC should be re-designated as a Commission. If it is re-designated as a Commission, most respondents agreed that two Deputy Commissioners should be appointed. Of the respondents that provided further explanation, many claimed that this would improve the PIRC, firstly by spreading the responsibility of one individual across multiple individuals, and secondly by increasing the impartiality and status of the organisation.

“Three heads are better than one in looking at ways to improve service, time management, results and staffing and also training to ensure everyone is on the same page when dealing with complaints.”

“...the PIRC should be re-designated as a Commission comprising a Commissioner and two Deputy Commissioners. Given the often high-profile, sensitive and complex nature of the PIRC's work, and the proposed expansion of its functions (including in respect of senior officers of Police Scotland) it would seem sensible to have collegiate decision-making in appropriate cases, rather than this being the responsibility of a single office-holder.”

“To increase independence of PIRC and to reassure the public that PIRC is a body with authority and standing.”

Furthermore, of the respondents that provided further comment, most emphasised their view that the Deputy Commissioners should be required to have legal knowledge. It was also suggested that certain types of people should be precluded from being appointed Deputy Commissioner, such as former police officers (of any rank) and other former Police Scotland staff. A minority of respondents disagreed and suggested that these restrictions are not needed.

“Deputy commissioners should have legal knowledge and therefore should be made up of either judges, sheriffs or solicitors who specialise in criminal law.”

“If there is a desire to provide greater accountability and transparency then perhaps former senior officers should be excluded.”

“I don't think any former police officer should be a deputy commissioner. Not just former senior ones.”

There was less consensus about who should be responsible for appointing the Deputy Commissioners. However, some suggestions included: the Scottish Government, the Scottish Parliament and the PIRC.

“Parliament, possibly the Justice Committee which should have more powers and be more open and transparent.”

“The PIRC should be responsible for appointing the Deputy Commissioners as they will form part of the senior management/leadership team.”

Most respondents agreed that a statutory Board should be created, with 25 respondents agreeing with this recommendation while 7 disagreed. Responses provided by organisations were almost equally split between agreeing and disagreeing with this recommendation. Of the respondents that provided further information, some argued the recommendation would increase the PIRC's integrity, accountability and status as well as instil public confidence in the organisation.

“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.”

### **Recommendations suggested by respondents**

No further suggestions were provided by respondents.

### 4.3.2 PIRC to be accountable to the Scottish Parliament for non-criminal matters (2.1I to 2.1N)

#### Recommendation

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**“The Police Investigations and Review Commissioner should be appointed by Her Majesty The Queen on the nomination of the Scottish Parliament and should be made accountable to the Scottish Parliament through the Scottish Parliamentary Corporate Body and the committees of the Parliament, but not for criminal matters, for which the Commissioner is accountable to the Lord Advocate, and not for operational matters or decisions in which she acts independently. This is in accordance with the 2009 opinion of the Council of Europe’s Commissioner for Human Rights that each Police Ombudsman or Police Complaints Commissioner should be appointed by and answerable to a legislative assembly or a committee of elected representatives that does not have express responsibilities for the delivery of policing services.”**  
(Recommendation 35, p. 461)

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#### Overview of responses

21 out of 39 respondents suggested that the appointment of the Police Investigations and Review Commissioner (PIRC) should be made by nomination of the Scottish Parliament. The remaining respondents were equally split between suggesting that it should remain a Scottish Ministerial appointment and stating that they ‘Don’t know’. Where additional comments were provided, those that were in favour of the responsibility lying with the Scottish Parliament reasoned that this would ensure that the PIRC is impartial and that the appointment process is fair and balanced.

“To ensure public confidence in the process, appointment cannot be made by a Minister. Appointments have to be seen to have been open to fair and relevant scrutiny.”

“All too often political influence can have a bearing on who controls the office. This is why nominations are the best and fairest method of electing the head of such and organisation like PIRCS”

There was an equal split between respondents that agreed and disagreed with the recommendation that the PIRC should be appointed by Her Majesty (HM) the Queen<sup>8</sup>. Responses from organisations were more likely to agree with this recommendation, while individuals were more likely to disagree. Many of the respondents that were in favour of the recommendation reasoned either that this would ensure that the PIRC is impartial or that it is a necessary formality. Of the respondents that were not in favour, many explained that HM would not have sufficient knowledge on the matter and that it would be an outdated formality.

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<sup>8</sup> While the Scottish Government acknowledges that this should now be His Majesty the King, the consultation specifically asked about Her Majesty the Queen.

“...an appointment by HM the Queen, in a similar vein to that of HM Chief Inspector of Constabulary in Scotland would remove any inference of political influence in any appointment.”

“Should be appointed by HM Queen on nomination of Scottish Ministers purely for presentational reasons.”

Out of 39 respondents, 30 suggested that the accountability arrangements for the PIRC should transfer to the Scottish Parliament. Among these respondents, 23 were responses from individuals and 7 were from organisations. Furthermore, 3 respondent organisations and 1 individual suggested that the arrangements should remain with the Scottish Ministers. Where additional comments were provided, ensuring impartiality and accountability of the PIRC were the most common reasons provided.

“The link to the legislature ensures accountability to the Scottish Parliament and enhances independence of the Office of PIRC. It is also consistent with the accountability arrangements for the Scottish Public Services Ombudsman.”

### **Recommendations suggested by respondents**

No further suggestions were provided by respondents.

### 4.3.3 Power to enable PIRC staff to access the Centurion database (2.2A to 2.2D)

#### Recommendation

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**“The Scottish Government should consider the case for giving the PIRC a specific legislative power that would enable staff to access the Centurion database from its own offices so that contemporaneous audit is possible. Providing a basis in law for accessing any information relevant to the PIRC’s statutory functions should ensure compatibility with GDPR and any other relevant data protection legislation.” (Recommendation 13, p. 457)**

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#### Overview of responses

32 out of 37 respondents agreed that the PIRC should be able to access Police Scotland’s complaints and conduct database remotely. Of the respondents that provided further comment, many reasoned that the PIRC needs access to complete information and that this would improve the accuracy and efficiency of its investigations. Some respondents stated that, while access should be granted, it is important that data protection concerns are addressed.

“Given access give them a complete picture instead of three-quarters of the story so it is meaningful”

“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.”

“As long as there are secure measures in place for accessing”

Of the respondents that expressed views on potential safeguards and limits in relation to the PIRC accessing Police Scotland’s complaints and conduct database, most suggested that such safeguards and limits need to be put in place before access can be granted. Respondents argued that there should be restrictions on who is granted such access and that they need to be appropriately vetted. Furthermore, respondents provided suggestions regarding what information the PIRC should have access to, including that they should only be able to view information that is relevant to an ongoing investigation.

“Access controls should be implemented so that appropriately vetted PIRC staff have access to sensitive data.”

“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.”

#### Recommendations suggested by respondents

Some respondents suggested that necessary safeguards and limits would have to be put in place if the PIRC is granted remote access to the Police Scotland complaints and conduct database. These include restrictions on who has access (e.g., properly

vetting staff beforehand) as well as what is being accessed (e.g., only information relevant to their ongoing investigations).

#### **4.3.4 PIRC powers to call in an investigation of a complaint (2.2E to 2.2G)**

##### **Recommendation**

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**“The PIRC should be given a statutory power to call in an investigation of a complaint if there is sufficient evidence that Police Scotland has not dealt with a complaint properly, where the complainer provides compelling evidence of a failure on the part of Police Scotland and where the Commissioner assesses that it would be in the public interest to carry out an independent re-investigation.” (Recommendation 37, p. 461)**

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##### **Overview of responses**

30 out of 32 respondents agreed that the PIRC should be given a statutory power to call in an investigation of a complaint. Furthermore, nearly the same number of respondents suggested that the PIRC should be able to investigate a complaint against Police Scotland in each of the following circumstances:

- If the complainer provides compelling evidence of a failure on the part of Police Scotland (chosen by 31 respondents).
- If there is sufficient evidence that Police Scotland has not dealt with a complaint properly (chosen by 31 respondents).
- If the Commissioner assesses that it would be in the public interest to carry out an independent re-investigation (chosen by 30 respondents).

Where further comments were provided, the majority of respondents reiterated their agreement with the recommendation. Some respondents argued that the PIRC should be able to investigate any complaints against Police Scotland without restriction.

“According to the PIRC they have no power to assess whether the matter is a crime or not, and if Police Scotland say it isn't the PIRC are simply barred from examining the complaint, no matter how much criminality it may have exposed... This glaring 'loop-hole' must be closed. It cannot be left to the criminal to decide if criminality is evident.”

“Dame Elish Angiolini has made the case robustly for PIRC to have the power to re-investigate a matter investigated by Police Scotland. It will be important that if this additional power is given that adequate resources are available to PIRC to ensure an efficient and effective investigation.”

“...PIRC should be able to investigate any complaint against Police Scotland as it so wishes under the direction of its senior management.”

##### **Recommendations suggested by respondents**

Some respondents suggested that the PIRC should be able to investigate any complaint.

### 4.3.5 PIRC powers to investigate Police Scotland practices or policies (2.2H to 2.2K)

#### Recommendation

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**“The PIRC should have an additional power, similar to the Police Ombudsman for Northern Ireland's (PONI), to investigate a current practice or policy of Police Scotland if she believes that it would be in the public interest to do so; this power should be used to focus on broad themes or trends, or practices which might be of particular public concern.” (Recommendation 38, p. 462)**

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#### Overview of responses

Out of 38 respondents, 27 agreed that the PIRC should be able to investigate current practices and policies of Police Scotland if the Commissioner believes it would be in the public interest. Overall, the most favoured response option selected by respondents was to disagree that this additional power should be limited in any way (out of 38 respondents, 19 disagreed and 13 agreed). However, responses from organisations were more likely to agree that these powers should be limited (out of 12 responses, 7 agreed while 3 disagreed). Where respondents provided further comments, some respondents suggested that this power should be subject to certain caveats, including that it should not lead to an abundance of unnecessary investigations and that there needs to be regular communication between the bodies.

“Should PIRC have any inkling to investigate a policy, procedure or practice that they believe impacts upon public confidence or worse may provide misconduct or criminal conduct then they should have the power to make that decision to investigate and this should be entirely separate of police or HMICS oversight”

“...acknowledges this recommendation however recognises the aforementioned description as primarily being the role and remit of Her Majesty's Inspector of Constabulary in Scotland (HMICS). As such, should there be a desire to extend such legislative powers to the PIRC, careful consideration requires to be afforded to such arrangements.”

“The PIRC is an inefficient body of limited use. It's powers are insufficient and many matters which it should be looking at, which are full of proof, are simply beyond it's remit.”

“This should only be carried out if in normal course a policy or procedure is found wanting it should not be carte Blanche to investigate everything they find during a trawl. It's a waste of time and money that would be better spent.”

#### Recommendations suggested by respondents

Some respondents suggested that if the PIRC is granted the power to investigate current practices and policies of Police Scotland, this should be subject to regular communication between the bodies and not lead to unnecessary investigations.



### 4.3.6 PIRC power to make recommendations and corresponding duty on the Chief Constable to comply (2.2L to 2.2P)

#### Recommendation

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**“The Commissioner, or potentially a Deputy Commissioner, should be vested with a statutory power to make recommendations in addition to the existing powers to direct reconsideration of complaints. The corollary to that is that there should be a statutory duty, subject to a public interest test, on the Chief Constable to comply with recommendations unless there are sound overriding operational or practical reasons for not complying with a PIRC recommendation and an obligation on PSD to report progress back to the PIRC. Those statutory arrangements should be supported by agreement between the PIRC and Police Scotland on how the PIRC will be kept advised of progress.” (Preliminary Recommendation 22, p. 475 of final report)**

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#### Overview of responses

19 out of 38 respondents agreed that recommendations from the PIRC should be put on a statutory footing similar to current reconsideration directions following both a review and an audit. The remaining respondents were almost equally split between agreeing that it should follow a review, disagreeing that it should be put on a statutory footing and being unsure. Most respondents agreed that Police Scotland or other policing bodies should be required to act on recommendations following a complaint handling review or audit. For example, of the 38 respondents, 17 respondents suggested that this should be without restriction, while 15 respondents believed that Police Scotland or other policing bodies should be required to act on the recommendations unless there is an overriding practical or operational reason not to do so.

Most respondents agreed that Police Scotland should have to respond to such recommendations following a review of police complaints handling (out of 38 respondents, 34 agreed while 3 disagreed). Similarly, the vast majority agreed that Police Scotland should have to respond to such recommendations following an audit of police complaints handling (out of 38 respondents, 33 agreed while 4 disagreed). Some respondents expressed concern that this is not currently the case and that there should be a requirement on Police Scotland to comply with the recommendations within a specified time. Furthermore, some suggested that the recommendations should be made publicly available.

“Police should carry out any PIRC recommendations without question and ensure that they are fully implemented within a time scale.”

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

“It should be published freely and frankly publicly on the website except for - as current - cases which would lead to identification of complainant or sensitive cases, e.g. sex abuse etc.”

## Recommendations suggested by respondents

Some respondents suggested that the recommendations provided by the PIRC should be published and that Police Scotland should be required to comply with the recommendations within a specified time.

### 4.3.7 Cross-jurisdictional issues (2.3A)

#### Recommendation

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**“The Scottish Government should agree with the UK Government and the Northern Ireland Executive how best to amend the primary legislation to give the PIRC the power, in clearly defined circumstances, to investigate the actions of officers from PSNI and English and Welsh police forces or services, and the other three reserved police forces, when they are undertaking a policing function in Scotland; and explore with the other administrations how reciprocal powers could be put in place for the IOPC and the PONI in respect of the actions of Police Scotland officers when they are operating in England, Wales or Northern Ireland.” (Recommendation 81, pp. 469-70)**

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#### Overview of responses

Among the respondents that provided views in relation to cross-jurisdictional issues, most agreed with the recommendation to address the existing gap in cross-jurisdictional investigations. Respondents suggested that the PIRC should be able to investigate all officers involved in incidents that occur in Scotland and emphasised the importance of cross-jurisdictional support and communication between nations.

“Regardless of where the officer is in the U.K they should all be treated the same by every force and investigated by relevant force if required.”

“This is essential. Every police officer exercising a police function in Scotland no matter their originating force, must be fully accountable in the same manner as an officer serving in the police service of Scotland. Also need to ensure that police staff are similarly considered.”

Of the respondents that disagreed with the recommendation, some suggested instead that the PIRC should not have this power and that it should be the responsibility of the jurisdiction that the officer is from.

#### Recommendations suggested by respondents

Some respondents suggested that cross-jurisdictional issues will need to be addressed through support and communication between the four nations.

## 4.4 Conduct and standards

This section sets out the proposals to address Dame Elish Angiolini's recommendations that relate to police conduct and standards. The recommendations consider a range of issues, including conduct legislation and senior officer misconduct allegations, with the aim of achieving a more open, transparent and fair process.

### 4.4.1 Gross misconduct proceedings to be held in public (3.1A to 3.1E)

#### Recommendation

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**“Police officer gross misconduct hearings should be held in public. The Chair should have discretion to restrict attendance as appropriate, but the aim should be to ensure that as much of a hearing is held in public as possible.”**  
(Recommendation 52, p. 464)

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#### Overview of responses

24 out of 41 respondents agreed that police officer gross misconduct hearings should be held in public. Responses from individuals were more likely to agree with this recommendation (18 agreed while 10 disagreed) and respondent organisations were almost evenly split between agreeing and disagreeing (6 agreed while 5 disagreed). Most respondents (29 out of 38) also agreed that if gross misconduct hearings are to be held in public, it should be applicable for officers of all ranks and not just for senior officers. Furthermore, 23 out of 40 respondents agreed that if gross misconduct hearings are held in public, the Chair of the hearing should have discretion in restricting attendance as they see appropriate. A clear majority of responses from organisations agreed that this should be the case (8 organisations agreed and 1 disagreed) while the opinion among responses from individuals was more split (16 individuals agreed and 12 disagreed). Where respondents provided further comments, most were in favour of the recommendation to hold gross misconduct hearings in public due to the need for more transparent procedures within the police.

“To ensure total transparency and that there is no cover up of the facts pertaining to the gross misconduct charge and also show the public the willingness of the police to be open and honest in all it does.”

“For true transparency and to impact the culture of cronyism, nepotism, and collusion... Accountability and acknowledgment are imperative. I believe a lack of transparency is preventing Police Scotland from positively growing and progressing... Transparency changes culture.”

However, some respondents argued that gross misconduct hearings are not criminal court cases and should not be treated as such. The respondents expressing this opinion highlighted that the gross misconduct hearings are an internal procedure and should therefore not be held in public, particularly when hearings of other professions

are not held in public. Furthermore, some respondents reasoned that the sensitive nature of gross misconduct hearings means that holding them in public can adversely impact those involved, including vulnerable witnesses.

“Gross Misconduct hearings are an employment matter and are quite distinct from a criminal trial.”

“Why are police treated (discriminated) differently from other walks of life? Do other professions have employment hearings in public?”

“Gross misconduct proceedings principally address high tariff actions or behaviours of constables or senior officers and the Service considers that deliberating such sensitive matters in the public domain has the potential to re-victimise witnesses and negatively impact on vulnerable victims, members of our communities as well as officers’ welfare and wellbeing.”

Of the respondents that elaborated on the circumstances under which attendance of the hearings should be restricted, most suggested restrictions for the protection of vulnerable individuals that may be involved in the hearings, including children, victims of abuse and individuals with mental health conditions. Police officers that might be the complainants or even the subjects of the hearings were also mentioned as potentially vulnerable individuals.

“Attendance should only be restricted following consideration of a number of circumstances and following representations made by the subject of proceedings and the appropriate authority. The factors the chair should take into consideration could include but are not limited to the following; vulnerability, mental health, welfare, ongoing criminal matters, public interest, sensitive police operations and tactics.”

“Where there is the potential for serious harm to the health or wellbeing of the officer or witnesses then there should be an option for the chair to hear the case in private.”

Other arguments in favour of restricted attendance of hearings included ensuring the proceedings of the hearings (and the operations of the police in general) are unobstructed. According to the respondents, disruptions or overcrowded venues could lead to hearing proceedings being obstructed, whereas hearings including many sensitive or classified details could lead to operational risks and could compromise the safety of officers if attendance is not restricted.

“If disruption to the proceedings or if numbers exceed safe capacity of the venue.”

“Where operational safety risks are evident.”

### **Recommendations suggested by respondents**

Some respondents suggested that hearings including many sensitive or classified details could lead to operational risks and could compromise the safety of officers if attendance is not restricted. Issues of exceeded venue capacity and other disruptions

were also mentioned as circumstances that could obstruct the hearing proceedings, justifying restricted attendance.

#### **4.4.2 Protection of vulnerable witnesses in gross misconduct proceedings (3.1F to 3.1H)**

##### **Recommendation**

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**“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, and they should also be under an obligation 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.” (Recommendation 53, pp. 464-5)**

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##### **Overview of responses**

Most respondents agreed with the recommendation that evidence provided by vulnerable witnesses should be heard in private to ensure their protection (out of 39 respondents, 24 agreed strongly while 5 agreed). The majority of responses also agreed that the Chair of gross misconduct hearings should be obliged to consider any other reasonable adjustments they deem necessary to ensure the protection of vulnerable individuals. When respondents were asked to specify what such reasonable adjustments could include, most responses suggested alternative options for how the hearings take place. These options included allowing pre-recorded statements and remote or live video.

“Remote or video evidence, screens or evidence given in private. Use of any pre-recorded evidence given as testimonial rather than personal appearance. Video identification of any person needing identified to take place before hearing.”

Ensuring that individuals are able to follow and understand the misconduct proceedings that concern them was considered part of the protection for vulnerable witnesses. Some respondents highlighted the need for reasonable adjustments in order to facilitate this understanding.

"Depending on what the vulnerable person is or has. For Autistics like myself with learning disabilities who have sensory issues; lighting, smells, sounds, heat etc. should be taken into account along with sensory headphones and glasses too. The meeting should be taped too as we have processing difficulties and would wish the respect of such conditions to play back to absorb and process conversations."

##### **Recommendations suggested by respondents**

Some respondents suggested the allowance of reasonable adjustments that could facilitate attendants' participation and understanding of proceedings. Such adjustments were related to either physical or mental disabilities and to the needs of neurodiverse individuals.

### 4.4.3 Outcome of gross misconduct proceedings to be made public (3.1I to 3.1J & 3.1N to 3.1P)

#### Recommendation

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**“The outcome of gross misconduct proceedings should be made public. The Chair’s report, subject to any necessary redactions, should be published by the Scottish Police Authority on its website for a period of no less than 28 days.” (Recommendation 58, p. 465)**

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#### Overview of responses

The vast majority of respondents agreed that the outcomes of gross misconduct proceedings should be made public (out of 39 respondents, 28 agreed strongly while 5 agreed). A few respondents emphasised that this would ensure transparency while others provided suggestions to protect the anonymity of the parties.

“This again would show transparency if implemented, it also helps officers who have been vindicated of any wrongdoing.”

“...PIRC regularly has complainers who are dissatisfied that they are not made aware of the outcome of misconduct hearings. For transparency, it is submitted that the outcome should be publicised, at least, in an abbreviated form.”

Over two-thirds of respondents also agreed that, if the outcomes are made public, the Chair’s report should be published by the Scottish Police Authority on its website, subject to any necessary redactions. Most respondents stated the Personal Identifiable Information (PII) of hearing participants should be redacted, including that of complainants, witnesses and whistleblowers. Out of 35 respondents, 16 suggested that the outcomes of proceedings should be available online for at least 28 days. Among the 13 respondents that suggested a different period of time, many stated that it should remain published for several years or indefinitely.

#### Recommendations suggested by respondents

No further suggestions were provided by respondents.

#### 4.4.4 Matters to be considered by a gross misconduct hearing (3.1K to 3.1M & 3.1Q to 3.1R)

##### Recommendation

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**Matters to be considered by a gross misconduct hearing is not a recommendation from the Dame Elish Review. However, in her 2017 review into Deaths and Serious Incidents in Police Custody in England and Wales, which is referred to in the final report, Dame Elish recommended that in the interests of transparency and public confidence ‘it would be useful to have greater specification about the criteria used by investigators to reach their decisions’ (2017 report, p. 175, para. 13.32)<sup>9</sup>**

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##### Overview of responses

Most respondents were in favour of an illustrative and publicly available list of matters likely to be considered by a gross misconduct hearing (of 36 respondents, 22 agreed strongly and 7 agreed). In terms who should be responsible for the publication of such a list, the PIRC was most frequently stated by respondents. 24 out of 38 respondents agreed that a finding of gross misconduct should always result in dismissal unless there are exceptional circumstances to justify an alternative sanction.

The majority of respondents supported the consideration of recommendations provided by Dame Elish regarding areas where amendments to the conduct regulations should be considered or where regulations could be clarified. These include amending the definition of ‘misconduct’ and ‘misconduct allegation’, updating the regulations to allow subject officers to make written representations at any point during investigations and defining the stages of misconduct pre-hearings in the regulations. 30 out of 37 respondents agreed with the recommendation to consider amending these regulations. Of the few respondents that provided additional comment, some expressed the need for reliable, clear and transparent procedures while also protecting the officers and allowing them to fulfil their duties unobstructed.

“Conduct matters must be transparent and consistent, they are not. They must not be used as a weapon against those who do the right thing, they are. There is no-one to report Police Scotland to when these things occur. In a modern society such a situation cannot be allowed to exist, much less go on.”

“Officers generally come to work to do a fair job. The conditions must remain proportionate to this and the fact that they are regularly dealing with criminals who have a vested interest in undermining and refuting the police. The conditions cannot render the job of the police and officers unmanageable, and put officers in fear of all complaints.”

##### Recommendations suggested by respondents

No further suggestions were provided by respondents.

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<sup>9</sup>Report of the Independent Review of Deaths and Serious Incidents in Police Custody (Dame Elish Angiolini, 2017): <https://www.gov.uk/government/publications/deaths-and-serious-incidents-in-police-custody>

## 4.4.5 Composition of gross misconduct hearing panels (3.1S to 3.1DD)

### Recommendation

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**“Gross misconduct hearings for all ranks should have 1) an independent legally qualified chair appointed by the Lord President, 2) an independent lay member appointed by the Lord President and 3) a policing member. This means in senior officer cases the role of Chair should transfer from the SPA to the independent legally qualified person. The policing member in senior officer cases should be appointed by the Lord President; in all other cases the policing member should be appointed by the Chief Constable.” (Recommendation 27, p. 459)**

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### Overview of recurring themes for all ranks of officer

Respondents were asked detailed questions regarding the composition of gross misconduct panels for hearings involving senior officers, Chief Superintendents, non-senior officers below the rank of Chief Superintendent as well as the role of the Lord President in appointing panel members. Overall, respondents suggested that the Chair of these hearings should be an independent legally qualified person while the hearing panel should also include an independent legally qualified person and an independent lay person. One prominent view expressed by respondents was the importance of transparency and impartiality of the process. Respondents suggested that this would be achieved through minimal involvement from policing bodies, while the Lord President should appoint hearing panel Chairs. A further prominent view was that panel members should have a good understanding of legal processes and the nature of policing. The following sections outline a more detailed account of the responses related to the composition of the gross misconduct hearings for each rank of officer as well as the role of the Lord President.

### Senior Officers (3.1S to 3.1U)

This section relates to the recommendations regarding the composition of gross misconduct hearing panels for senior officers.

### Overview of responses

Most respondents (27 out of 36) agreed that the appointed Chair of gross misconduct hearings should be an independent legally qualified person. In addition to the appointed Chair, the most frequent category of person selected to be included in the hearing panel was a senior expert in policing other than the HM Chief Inspector (chosen by 21 respondents). This was also the option most favoured among respondent organisations. The second most frequent suggestion was that the panel should include an independent lay person (chosen by 19 respondents), which was closely followed by the suggestion that an independent legally qualified person should be included (chosen by 17 respondents). These options were most frequently favoured by responses from individuals. Where respondents provided further information, many stated that the hearing panel should have a good understanding of the context and legal ramifications of gross misconduct cases.



"The sanctions available (i.e., dismissal) are so serious and cases often so complex as to merit an independent person with a legal background being Chair."

Respondents also reasoned that the panel should have a good understanding of the nature of policing and the situations faced by police officers.

"There is a definite need to have an understanding of policing for such a role is unlike any other profession, in particular, with relation to split second decisions made by officers daily. This needs to be understood."

Some respondents also highlighted the need for the hearing panels to consist of a range of different members, including legally qualified persons, policing experts and HR professionals. However, other respondents suggested that there should be minimal involvement from the police. These respondents explained that this is necessary to ensure that the procedure is unbiased and that it would also increase public confidence.

"...An independent legally qualified person would be best placed to make such determinations. Further, for transparency and confidence, this should not be a member of Police Scotland nor the SPA. ... the panel should include a member with the necessary knowledge and experience of policing. ... The panel should also include a suitably qualified HR professional. This will provide a balance of skills set and knowledge of current good employment practices (notwithstanding the unique position of police officers not being employees but rather the holders of the office of constable)."

"Misconduct hearings have to be seen to be independent, therefore there cannot be any involvement of any police officer on the hearing panel."

### **Recommendations suggested by respondents**

No further suggestions were provided by respondents.

### **Chief Superintendents (3.1V to 3.1X)**

This section relates to the recommendations regarding the composition of gross misconduct hearing panels for Chief Superintendents.

#### **Overview of responses**

Most respondents (23 out of 32) agreed that the appointed Chair of gross misconduct hearings should be an independent legally qualified person. In addition to the appointed Chair, the most frequent category of person selected to be included in the hearing panel was an independent legally qualified person (chosen by 18 respondents). This was also the option most favoured by responses from individuals. The second most frequent suggestion was that the panel should include an independent lay person (chosen by 17 respondents), while the third most frequent suggestion was that a senior expert in policing should be included (chosen by 12 respondents). Responses from organisations were equally split between these two suggestions. Where respondents provided further information, the most prominent

view expressed was the importance of ensuring impartiality in hearings, with some respondents suggesting that retired or in-service police officers, or anyone else affiliated with policing, should not participate in the hearings to maintain a fair procedure. However, some respondents also argued that appointed persons to hearings should have an understanding of the legal context and the nature of policing.

“Not using ex policemen or any affiliated to the police would ensure non biased opinions and a fairer hearing.”

“Someone needs to know legal position, and someone needs to know the role [of policing].”

### **Recommendations suggested by respondents**

No further suggestions were provided by respondents.

### **Non-senior officers below the rank of Chief Superintendent (3.1Y to 3.1AA)**

This section relates to the recommendations regarding the composition of gross misconduct hearing panels for non-senior officers below the rank of Chief Superintendent.

#### **Overview of responses**

Most respondents (24 out of 31) agreed that the appointed Chair of gross misconduct hearings should be an independent legally qualified person. In addition to the appointed Chair, the most frequent category of person selected to be included in the hearing panel was an independent lay person (chosen by 22 respondents). This option was the most frequently selected by both respondent individuals and organisations. The second most frequent suggestion, chosen by 16 respondents, was that an independent legally qualified person should be included. The third most frequent suggestion, chosen by 10 respondents, was that the panel should include a serving officer of the rank of superintendent or above that is at least two ranks higher than the subject officer. Where respondents provided further information, the importance of impartiality and transparency in the gross misconduct hearings was frequently mentioned. There was a view among some respondents that police members (retired or in service) or any other individuals affiliated with the police should not participate in hearings to ensure impartiality and a fairer procedure.

“Cases are complex and police officers regardless of rank are not trained in the nuances of employment law and HR matters. An independent panel that includes experts would enhance the decision making of the panel.”

### **Recommendations suggested by respondents**

No further suggestions were provided by respondents.

### **Role of the Lord President (3.1BB to 3.1DD)**

This section relates to the recommendations regarding the role of the Lord President in gross misconduct hearing panels.

## Overview of responses

Overall, most respondents agreed that the Lord President should appoint the Chair of a gross misconduct hearing which is considering allegations against officers. The most frequently selected option was that the Lord President should appoint the Chair in cases involving senior officers (chosen by 21 respondents), followed by cases involving Chief Superintendents (chosen by 18 respondents) and non-senior officers below the rank of Chief Superintendent (chosen by 15 respondents). A similar pattern among respondents was found regarding the Lord President's authority to appoint the rest of the panel members. Where further comments were provided, respondents that were in favour of the Lord President's involvement reasoned that this would ensure the impartiality and independence of the process. However, respondents that were not in favour of the Lord President's involvement stated that this would be excessive and could lead to delays.

"The Lord President, as not affiliated to the police, would select the panel to ensure a fair hearing without there being a possibility of repercussions or retaliation."

"Conflict of interest, LP is a Scottish Gov body funded Judiciary employee, PIRC moved to Parliamentary Commissioner means Parliament appoint independent legally qualified hearing Chair/members."

"The misconduct regime can often be time consuming and new Regulations in England and Wales have been designed to ensure the process is reasonable and proportionate. For the Lord President to appoint panels this would build delay into the process..."

## Recommendations suggested by respondents

No further suggestions were provided by respondents.

## Additional comments regarding misconduct and gross misconduct proceedings (3.1EE, 3.1FF)

This section relates to additional comments regarding misconduct and gross misconduct hearing panels.

## Overview of responses

Some respondents suggested outcomes to misconduct hearings should be published. Some less frequent comments requested stricter sentences for officers found guilty of misconduct, while others highlighted the need for further guidance and clarifications regarding the matter of misconduct.

"Once the hearing has been heard the findings should be published so those that could not attend would know the outcome."

"Stiffer sentencing and disciplinary measures for bad policing."

## Recommendations suggested by respondents

No further suggestions were provided by respondents.

## 4.4.6 Continuation of gross misconduct proceedings if officer leaves (3.2A to 3.2G, 3.2L)

### Recommendation

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**“The Scottish Government should develop proposals for primary legislation that would allow, from the point of enactment, gross misconduct proceedings in respect of any police officer or former police officer to continue, or commence, after the individual ceases to hold the office of constable.” (Recommendation 22, p. 458)**

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### Overview of responses

26 out of 36 respondents agreed that it should be possible to begin and continue gross misconduct proceedings against former officers of any rank. Some respondents suggested that this should only occur in specific circumstances, such as (i) when in the public interest, (ii) if allegations related to on-duty misconduct, (iii) where there is strong evidence and (iv) where the matter is serious enough for the officer to be dismissed. Most respondents agreed that the relevant authority should take into consideration the wishes of a complainer.

“Allegations or complaints of misconduct at every level of Police Scotland have to be seen to be thoroughly investigated in order to maintain public confidence in policing.”

“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 was less consensus regarding who should be responsible for making this decision. 14 respondents suggested the PIRC, 9 proposed the SPA and 7 advocated for a different body than those included in the options. Respondents who suggested a different body specified that this should be an independent, legally qualified party. The most cited characteristic for such a decision maker to possess was impartiality, transparency, having the necessary authority and adherence to ethical principles.

“...A person out with the organisation is imperative to ensure this culture does not influence decisions.”

“Using a legally independent person proficient in law will ensure no favouritism towards the officer being investigated by other officers”

“PIRC, assuming they are wholly independent and have legal powers to make criminal charges without fear or favour and uphold Code of Ethics and Nolan principles.”

“In respect of former senior officers, decisions to commence or continue proceedings should lie with the PIRC...”

Respondents most frequently disagreed that specific arrangements of the gross misconduct hearings (i.e., if hearings were held in public and were chaired by a legally independent chair) would change their views provided on the recommendation (26 respondents selected this option). The second most frequently selected option was that their views would change if the hearings were chaired by a legally independent chair, as chosen by 6 respondents.

### **Recommendations suggested by respondents**

Some respondents suggested that the body that decides whether gross misconduct hearings should be held after an officer leaves the service should be impartial, transparent and adhere to ethical principles. Some respondents specified that it should be an independent legally qualified party that should make these decisions.

#### 4.4.7 Continuation of disciplinary proceedings for former officers beyond 12 months (3.2H to 3.2J, 3.2L)

##### Recommendation

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**“In gross misconduct cases, for all ranks, the Police Investigations and Review Commissioner (PIRC) should determine if it is reasonable and proportionate to pursue disciplinary proceedings in relation to former police officers after the twelve-month period, taking into account the seriousness of the alleged misconduct, the impact of the allegation on public confidence in the police, and the public interest.” (Recommendation 23, pp. 458-9)**

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##### Overview of responses

Most respondents (27 out of 36 respondents) agreed that it should be possible for gross misconduct proceedings to be taken forward where allegations came to the attention of the relevant authority more than 12 months after the person ceased to be an officer and the following conditions are met:

- the case is serious and exceptional,
- the case is likely to damage public confidence in policing, and
- the PIRC has determined disciplinary proceedings reasonable and proportionate

Furthermore, 26 out of 36 respondents agreed that this should be possible for proceedings involving all ranks of police officer. Of the respondents that provided further information, many emphasised that officers should be held accountable for their actions regardless of timescale. Respondents also highlighted the importance of maintaining public trust and securing justice for complainers irrespective of timeframe.

“Regardless of when an officer left the force they should remain accountable for all allegations as dependent on the allegation it could be distressing for the complainer to come to terms with what happened and get the courage to bring it up.”

“Everyone else is accountable in society regardless of timescales so why not the police?...”

A minority of respondents were not in favour of the recommendation and highlighted the absence of such powers for employees in other areas of society. Some expressed concern that this could infringe on the private lives of former officers and is not proportional with respect to practices in non-policing organisations.

“This would be inappropriate as once you have resigned you are no longer an employee. What other organisations would allow such a breach of a persons rights and private life to happen?”

“This is not proportionate. Police Officers already have considerable restrictions on their private lives as a result of their employment. It is difficult to foresee circumstances where any officer be pursued for a conduct matter more than 12

months after leaving the service would be seen as reasonable, or indeed productive.”

**Recommendations suggested by respondents**

No further suggestions were provided by respondents.

## 4.4.8 Barred and advisory lists (3.2K to 3.2L)

### Recommendation

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**“The Scottish Government should engage with the UK Government with a view to adopting Police Barred and Advisory Lists, to learn from experience south of the border and to ensure compatibility and reciprocal arrangements across jurisdictions.” (Recommendation 24, p. 459)**

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### Overview of responses

The most favoured option by respondents was that the Scottish Government should work with the UK Government to adopt the Barred and Advisory Lists model. 28 respondents agreed (including 21 responses from individuals and 7 from organisations). The second most frequently stated option was ‘Don’t know’ (out of 8 respondents, 5 were individuals and 3 were organisations) while the third was the suggestion that they should work together to adopt other measures (out of 4 respondents, 3 were individuals and 1 was an organisation).

Some respondents suggested that there should be a zero-tolerance policy for misdemeanours while others emphasised that it should be considered that people can change. Other comments included that the Scottish Intelligence Database can be used as a record and dissemination tool.

“Subject to any difficulties around different regulations and legal processes, it would make sense for Police Scotland to adopt a similar approach to England & Wales in order that information can be shared appropriately.”

“...[we] fully supports this recommendation and proposes that the lists created reflect the processes in use elsewhere in the United Kingdom which include all officers, special constables and staff members who have resigned or retired during an investigation or prior to proceedings commencing or concluding whilst also encompassing those individuals who leave the service before an allegation comes to light.”

“Lists are fine but that person can reform for example in building industry people were targeted on a list some people might be on a list inappropriate”

### Recommendations suggested by respondents

No further suggestions were provided by respondents.



## 4.4.9 Appeals against determinations of gross misconduct (3.3A to 3.3C)

### Recommendation

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**“There should be one route of appeal against a determination of a gross misconduct hearing or the disciplinary action to be taken and that should be to a Police Appeals Tribunal, as at present. This recommendation is subject to the Police Appeals Tribunals being transferred into the [Scottish Tribunals].”**  
**(Recommendation 28, pp. 459-60)**

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### Overview of responses

Given the transfer of the Police Appeals Tribunal to the Scottish Tribunals, most respondents (25 out of 31) agreed that senior officer misconduct regulations should be revised to ensure that there is only one route of appeal (i.e., the Police Appeals Tribunal for senior officer misconduct hearings where there has been a finding of gross misconduct). Respondents were more balanced in terms of who should be the responsible body for managing appeals against determinations of misconduct, whether it be the Police Appeals Tribunal or an independent legally chaired panel. The majority of responses from organisations (7 out of 8) favoured the former. Where further comments were provided, the most prominent theme was the importance of impartiality in any body managing the appeals process. This was seen as important for maintaining transparency, accountability and public confidence. Several respondents advocated for the independent legally chaired panel to manage the gross misconduct appeals process on the basis that it would ensure the impartiality of the process.

“[An] independent legally chaired panel would ensure transparency and unbiased findings”

“If a finding of either Gross Misconduct or Misconduct is made against a senior officer the effect is career ending for the officer. It is therefore only right that the course of an appeal against such a finding should be to a body independent of that which made the finding.”

Many respondents also favoured a simple and consistent approach to the processes for misconduct appeals and some highlighted the importance of consistent treatment of officers across all ranks for the purposes of equality and fairness.

“For a regime which is designed to open, transparent, it is important to also ensure equality and fairness in the processes which apply to officers despite their rank.”

“It is important that access to Police Appeals Tribunal be consistent for gross misconduct and misconduct findings given the particular expert nature of that Tribunal. This allows specialism to be developed among the panel chair and members and jurisprudence to be developed which is applicable to both sets of officers.”

### **Recommendations suggested by respondents**

Some respondents suggested that an impartial body should be responsible for managing the appeals process. Some respondents suggested that there should be a simple and consistent approach to appeals' processes and that all officers should be treated equally, regardless of rank.

## 4.4.10 Accelerated misconduct hearings (3.4A to 3.4J)

### Recommendation

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**“Provision equivalent to that in England and Wales for accelerated misconduct hearings should be included in Scottish conduct regulations for all ranks of constable to deal with circumstances where the evidence is incontrovertible and where that evidence means that without further evidence it is possible to prove gross misconduct, or where the subject officer admits to their behaviour being gross misconduct.” (Recommendation 51, p. 464)**

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### Overview of responses

Out of 34 respondents, 22 agreed that accelerated gross misconduct hearings should be able to take place when the evidence is incontrovertible and can prove gross misconduct without additional evidence being needed. Furthermore, a clear majority of respondents (27 out of 34) agreed that it should be possible for such hearings to take place when the subject officer admits to their behaviour being gross misconduct.

There was less clear consensus regarding which body should be responsible for deciding whether evidence is considered incontrovertible for cases involving non-senior and senior officers. In non-senior officer cases, the most frequent suggestion (chosen by 13 respondents) was that a different body (not included in the options provided) should be responsible. Of the respondents that specified further, an independent legally qualified body or the PIRC were most frequently mentioned. The remaining respondents were primarily split between suggesting that this responsibility should lie with the Deputy Chief Constable (chosen by 5 respondents), Police Scotland’s Professional Standards Department (chosen by 5 respondents), or ‘Don’t know’ (chosen by 6 respondents). In cases involving senior officers, the most frequent suggestion (chosen by 13 respondents) was that a different body (not included in the options provided) should be responsible. Of the respondents that specified further, most suggested that this should be an independent legally qualified body. The second most frequently selected option was the PIRC (chosen by 7 respondents), closely followed by ‘Don’t know’ (chosen by 6 respondents).

Respondents provided a wide range of suggestions for types of evidence that may be incontrovertible. Many respondents advocated for either a criminal conviction in court or an admission of guilt. A large share of responses also stated that clear evidence should be considered incontrovertible, such as: CCTV and other video evidence, witness statements, written evidence (e.g., emails, text messages, social media) and audio recordings. To a lesser extent, some respondents also flagged physical evidence (e.g., DNA and fingerprints), polygraph and evidence from body language experts as worthy of consideration. A few respondents also highlighted that determining whether evidence is incontrovertible is not always straightforward.

“At the very least, proof beyond reasonable doubt. Depending on the nature of the offence that could include CCTV/Audio recording/telephone records/messages backed by witness testimony, a conviction in a criminal court or the subject officer accepting the findings.”

“Evidence is incontrovertible where there is no need for further evidence. That is in circumstances where there is an admission by an officer or a conviction for the subject matter or body worn video evidence of sufficient quality including audio evidence (where applicable).”

“The question of whether evidence in a particular case is incontrovertible will not always be straightforward, but the forms of evidence that could satisfy that standard include CCTV footage and DNA. However, it is not so much the form of the evidence that is important, than the fact that it is beyond any reasonable dispute.”

In terms of who should be responsible for deciding if expedited proceedings are appropriate in cases involving non-senior officers, the most frequent suggestion was that a different body (not included in the options provided) should be responsible, with many respondents clarifying that it should be the PIRC and/or an independent legally qualified party. This was also true for cases involving senior officers. For senior officers, responses from organisations were almost equally split between suggesting that it should be the Chief Constable, the PIRC, the SPA, specifying a different party and ‘Don’t know’.

A clear majority of respondents (26 out of 33) agreed that an investigation into allegations should take place where evidence is deemed incontrovertible but the officer in question does not admit to their behaviour being gross misconduct. 27 out of 34 respondents also agreed that the Scottish Ministers should consider applying indicative timescales to such an investigation. Where an officer is convicted of a criminal offence which would constitute gross misconduct, a slight majority of respondents agreed that the Charing Panel or Charing Constable should be able to move to dismiss that officer immediately without separate misconduct proceedings.

### **Recommendations suggested by respondents**

Some respondents suggested that a criminal conviction in court, admissions of guilt and clear evidence can be considered as incontrovertible evidence. Specific suggestions of such evidence included CCTV, witness statements, written evidence and audio recordings.

## 4.4.11 Key stages of senior officer misconduct proceedings (3.5C)

### Recommendation

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**“The Police Investigations and Review Commissioner (PIRC) should take on responsibility for the key stages of the senior officer misconduct proceedings (both misconduct and gross misconduct) i.e. the functions of receipt of complaints/allegations, preliminary assessment, referral to COPFS of criminal allegations and, where appropriate, referral to an independent legally chaired panel.” (Recommendation 39, p. 462)**

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### Overview of responses

Most respondents agreed that the PIRC should take on responsibility for key aspects of misconduct and gross misconduct proceedings for senior officers. Specifically, the most frequently selected option (chosen by 24 respondents) was that the PIRC should take on responsibility for the receipt of complaints and allegations as well as referral to an independent legally chaired panel, where appropriate. The second most common suggestion (chosen by 19 respondents) was that the PIRC should be responsible for referral to an independent legally chaired panel if there is a disciplinary hearing after referral to the Crown Office and Procurator Fiscal Service (COPFS). Furthermore, most of the remaining respondents were almost evenly split between respondents suggesting that the PIRC should take on the responsibility for preliminary assessments (chosen by 15 respondents) and for referral to COPFS for criminal allegations (chosen by 16 respondents).

### Recommendations suggested by respondents

No further suggestions were provided by respondents.

## 4.4.12 Preliminary assessment function (3.5A to 3.5B)

### Recommendation

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**“The statutory preliminary assessment function should be transferred from the Scottish Police Authority (SPA) to the Police Investigations and Review Commissioner (PIRC) in order to enhance independent scrutiny of allegations, remove any perception of familiarity, avoid any duplication of functions or associated delay, and give greater clarity around the process. The preliminary assessment should be carried out by the Commissioner or a Deputy Commissioner.” (Recommendation 25, p. 459)**

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### Overview of responses

Most respondents agreed with the recommendation that the preliminary assessment of misconduct allegations made against senior police officers should be made by the PIRC (19 agreed strongly and 5 agreed, while 6 disagreed strongly). Additionally, most respondents agreed that the preliminary assessment should be decided on by the Commissioner or their Deputy.

### Recommendations suggested by respondents

No further suggestions were provided by respondents.

## 4.4.13 Preliminary assessment considerations (3.5D to 3.5H)

### Recommendation

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**“Any process for preliminary assessment of senior officer misconduct should require the relevant authority both to take into account whether the allegation is made anonymously, is specific in time and location, or whether it appears, on the face of the allegation, to be either vexatious or malicious. Scottish Government should consider amending the conduct regulations to reflect this process.”**  
**(Recommendation 19, p. 474 of final report)**

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### Overview of responses

Out of 33 respondents, 17 suggested that the relevant body carrying out an investigation into an allegation against a police officer should not take into consideration whether an allegation is made anonymously for any rank of police officer. The second most frequent suggestion was that this should be taken into consideration for non-senior officers (chosen by 7 respondents). Furthermore, 13 out of 33 respondents suggested that the relevant body should not take into consideration whether an allegation is sufficiently specific in time and location for any rank of officer. The second and third most frequent suggestion was that this should be taken into consideration for non-senior officers (chosen by 8 respondents) and senior officers (chosen by 6 respondents). 12 out of 33 respondents also suggested that the body should not take into consideration whether an allegation is malicious for any rank of police officers, followed closely by the suggestion that it should be considered in cases involving non-senior officers (chosen by 10 respondents).

There was less consensus among responses made on behalf of organisations, who were evenly split between suggesting that it should be taken into consideration for all ranks, only for non-senior officers, only for senior officers, not for any rank of officer as well as being unsure. Most respondents were consistent in suggesting that complaints should go through an initial investigation where facts and evidence are established to determine whether a complaint is labelled as vexatious or malicious.

“Through close examination of the weight of evidence presented.”

“If a genuine complaint puts the named officer in the correct place at the correct time it should be sufficient to be taken seriously”

Some respondents expressed a concern that genuine complaints could be mislabelled as vexatious or malicious because they are inconvenient. There were suggestions this labelling should be handled by an independent body and there should be specific guidance or criteria to determine whether a complaint is vexatious or malicious.

“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...”

“A statutory basis on which to classify them as vexatious or malicious would be a positive development.”

### **Recommendations suggested by respondents**

Some respondents suggested that complaints should go through an initial investigation and specific guidance and criteria should be used to determine whether a complaint is vexatious or malicious.



#### 4.4.14 Presentation of cases in senior officer gross misconduct hearings (3.5I to 3.5K)

##### Recommendation

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**“The PIRC should be given a new statutory function and power to present a case at a senior officer gross misconduct hearing where the case would be determined by a three-person panel comprising an independent legally qualified chair, a lay person and an expert in senior policing.” (Recommendation 40, p. 462)**

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##### Overview of responses

Out of 32 respondents, 26 agreed that the PIRC should be able to present a case at a senior officer’s gross misconduct hearing. A clear majority of respondents (30 out of 34 respondents) agreed that an 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. Respondents were given the opportunity to provide further comments regarding senior officer misconduct cases<sup>10</sup>. The most prominent theme was the view that the PIRC should be granted more power and authority over gross misconduct investigations. Respondents argued that such investigations need to be overseen by the PIRC because they are an independent organisation and this would ensure transparency of the process. Some respondents emphasised that the PIRC should not employ people with a police background if they want to be impartial.

“PIRC should be given heavier and stronger powers to ensure nothing is hidden or altered in any way thereby having transparency”

“The transfer of all aspects of the misconduct process to a reformed PIRC would allow for a professional assessment of allegations and complaints away from the Scottish Police Authority.”

“PIRC is not independent in being staffed mainly by ex police officers so they need to be replaced by independent lay people.”

The second most prominent theme was the view that police officers of all ranks should be treated equally in cases of misconduct.

“All too often senior officers seem to escape investigation and those below them suffer or are made scapegoats. Too many cover ups are happening and senior officers should be held accountable for their actions”

“Just think there is no difference expect rank between Police Officers and in Business they all have one misconduct process which is right so why is there a difference in civilian life the complaint could come from an admin or clerical staff

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<sup>10</sup> Due to an error on the online consultation form, some respondents were able to provide comments to this question multiple times while others were not.

against their line and unit manager or supervisor so what is the difference and why should the police have a different process.”

The third most prominent theme was the view that misconduct allegations should be led by an independent party, with some respondents suggesting that the PIRC is not sufficiently impartial for this task.

“Senior police officers establish close relationships with people in prominent positions in the SPA, the PIRC, HMICS. In my opinion senior officers will never be vulnerable to any real scrutiny or accountability while this situation continues therefore oversight must be carried out by a completely independent organisation with no close ties to policing.”

### **Recommendations suggested by respondents**

Some respondents suggested that the PIRC should be granted more power and authority over gross misconduct cases and that they should not employ people with a background in policing as this puts their impartiality at risk. Some respondents also suggested that all police officers should be treated equally, regardless of rank.

#### 4.4.15 PIRC power to recommend suspension of senior officers (3.5L to 3.5O)

##### Recommendation

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**“The Police Investigations and Review Commissioner (PIRC) should have the power to recommend suspension of a senior officer if she or he believes that not suspending the officer may prejudice an effective misconduct investigation. The PIRC should provide supporting reasons when they make such a recommendation to the SPA that a senior officer should be suspended.”**  
(Recommendation 41, p. 462)

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##### Overview of responses

A majority of respondents (29 out of 34) agreed with the recommendation that the PIRC have the ability to recommend the suspension of a senior officer. Out of those who responded, there was some consensus that suspension should only be recommended in circumstances when not suspending an officer may prejudice an effective misconduct investigation (17 agreed or strongly agreed, while 11 disagreed or strongly disagreed). Respondents agreeing with the recommendation stated that suspension may help to ensure the integrity and neutrality of the effective misconduct investigation as well as help to protect involved individuals.

“Any officer under investigation should be suspended pending the outcome as they still have access to files, computers and other officers and that these officers may feel uncomfortable being in the presence of an officer under investigation”

For those respondents that disagreed, some stated that suspensions should not solely be determined by the effective misconduct investigation. Some respondents cited other factors that should be considered, such as the vulnerability of potential victims, the severity of the allegation and public confidence.

“To prejudice the effective misconduct investigation should not be the only circumstances when suspension is recommended, significant weight should also be given to public interest, seriousness of the allegations.”

“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...”

Furthermore, 29 out of 32 respondents agreed that if the PIRC is able to recommend the suspension of a senior officer, the PIRC should be required to provide supporting reasons when they make such a recommendation to the SPA.

##### Recommendations suggested by respondents

No further suggestions were provided by respondents.

## 4.4.16 Vexatious complainers (3.6A to 3.6B)

### Recommendation

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**“The Scottish Government should consider the case for amending the legislation to include a provision to deal with vexatious complainers.” (Preliminary Recommendation 13, p. 473 of final report)**

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#### Overview of responses

Given the work that is already underway to align processes and policies on vexatious complainers across policing bodies, 24 out of 34 respondents agreed that the Scottish Government should also consider amending legislation to deal with vexatious complainers. Where respondents provided further information, the most prominent view was that an independent body should be given the responsibility to determine whether a complaint is vexatious.

“It should not be up to the police to determine when a complaint is vexatious”

“All complainants have the right to be heard appropriately and fairly.”

“It must be down to an independent body to decide when complaints can be declared vexatious.”

The next most prominent theme was the view that suitable processes need to be implemented to decide whether a complaint is vexatious. Respondents highlighted the need for a proportionate approach, with some respondents expressing concern that an overly stringent approach could deter people from putting forward genuine complaints. Furthermore, some respondents expressed concern that the relevant terminology should be changed because they felt it is currently unclear or has harmful and negative connotations.

“Processes should be in place so people have the confidence to complain and have confidence in the process. Having a proper way of dealing with vexatious complainers will make sure that people have that confidence and will stop vexatious and malicious complaints.”

“...[we are] satisfied that its recently refreshed ‘Unacceptable Actions of Complainers Guidance’ sufficiently addresses instances where individuals are assessed to be vexatious, abusive, overly demanding or unreasonable in their interaction with Police Scotland, including their engagement with the Professional Standards Department.”

“...if statute is required, recommend that the language of vexatious or malicious complaints (or complainers) not be used. Our experience is that the language unhelpfully requires a negative judgement to be made of an individuals’ attitude and reason for complaining, and that focus can make it more difficult to resolve matters and de-escalate situations.”

“Notwithstanding, the organisation would welcome discussions around legislative provisions to define ‘vexatious complainers’ in order to ensure consistency and equitable practice across policing bodies.”

### **Recommendations suggested by respondents**

Some respondents suggested that determining whether a complaint is vexatious should be done by an independent body and there should be appropriate processes in place for the body to make such decisions and review them.

#### **4.4.17 Provisions to issue statutory guidance relating to conduct (3.7A to 3.7F)**

##### **Recommendation**

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**“The 2012 Act should be amended to confer on Scottish Ministers a power to issue statutory guidance in respect of conduct and a duty to consult on any such guidance, and confer a duty on policing bodies to have regard to any such guidance. Scottish Ministers should use that power at the earliest opportunity to issue guidance in respect of a new Reflective Practice Review Process. That guidance should build on the spirit of existing Scottish guidance and take into account any valuable elements of English and Welsh best practice.”**  
**(Recommendation 54, p. 465)**

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##### **Overview of responses**

The vast majority of respondents agreed that the Scottish Ministers should be able to issue statutory guidance in respect of conduct (out of 32 respondents, 27 agreed). They also agreed that they should be required to consult on such guidance, that a duty to regard it should be placed on policing bodies and that it should be used to bring forward guidance in respect of a new Reflective Practice Review Process. Furthermore, out of 30 respondents, 25 agreed that the Scottish Ministers should consider issuing statutory guidance to make it clear where matters relate to conduct and where they do not.

##### **Recommendations suggested by respondents**

No further suggestions were provided by respondents.

#### **4.4.18 Review of regulations regarding disciplinary and grievance procedures (3.7G)**

##### **Recommendation**

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**A review of disciplinary and grievance procedures is not a recommendation in the Dame Elish Review. However, an additional proposal is being considered to review the regulations relating to police conduct in Scotland to ensure that processes are closely aligned with the Advisory, Conciliation and Arbitration Service (ACAS) statutory code of practice.**

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##### **Overview of responses**

Out of 32 respondents, 17 agreed strongly and 5 agreed that regulations governing police conduct in Scotland should be reviewed so that it can be considered whether the regulations should be brought in line with ACAS' latest code of practice on disciplinary and grievance procedures.

##### **Recommendations suggested by respondents**

No further suggestions were provided by respondents.

## 4.4.19 Joint misconduct proceedings (3.7H to 3.7M)

### Recommendation

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**“Subject to safeguards needed to protect the rights of each individual officer, the regulations should make provision for the possibility of joint misconduct proceedings to deal with any number of officers, including senior officers.”**  
(Recommendation 55, p. 465)

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### Overview of responses

21 out of 32 respondents agreed that it should be possible for joint misconduct proceedings to be held to deal with any number or rank of officers. Where further comments were provided, one prominent theme was the view that the circumstances surrounding the conduct should be taken into consideration when deciding whether to hold joint misconduct proceedings. An equally prominent theme was the view that practical considerations need to be considered, such as how efficient the process should be. Respondents provided several suggestions regarding the safeguards that should be put in place to protect the rights of individual officers in joint misconduct proceedings. This included the view that each officer should be entitled to legal advice and representation, and many specified that this should be received separately.

“Independent representation is needed for each officer concerned and this should be defined clearly to ensure that there is no opportunity to use joint or single proceedings to disadvantage one of the officers.”

“separate legal representation for each if requested and at no cost to the staff member”

There was no clear consensus among respondents regarding who should make the decision as to whether joint proceedings are appropriate. Most respondents stated that their opinions on gross misconduct hearings would not change if hearings for senior officers were to be chaired by a legally qualified chair or if hearings were to be held in public for senior officers only.

### Recommendations suggested by respondents

Some respondents suggested that circumstances surrounding the complaint (e.g., similarity of complaints) and practical consideration (e.g., efficiency of the process) should be taken into account when making the decision to hold a joint misconduct hearing. Furthermore, each individual officer in a joint misconduct proceeding should be entitled to individual legal advice and representation.



## 4.4.20 Misconduct allegations against probationers (3.7N to 3.7Q)

### Recommendation

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**“The regulations governing probation (the Police Service of Scotland Regulations 2013) should be amended so that a fair and speedy consideration of any allegation of misconduct can be dealt with during the probation period.”**  
(Recommendation 56, p. 465)

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### Overview of responses

Out of 33 respondents, 19 agreed strongly and 2 agreed with the suggestion that any allegation of misconduct should be dealt with more speedily during an officer’s probation period. Respondents were broadly split between suggesting that misconduct allegations during an officer’s probation period should be dealt with through the same conduct regulations which all other officers are subject to (chosen by 15 respondents) and through the regulations which govern probation (chosen by 12 respondents). Responses from individuals were more likely to favour the former option, while those provided by organisations preferred the latter.

The most frequent opinion expressed by respondents was disagreement that their previous suggestions would be different if timescales relating to the investigation stages of misconduct allegations were set out in legislation (out of 32 respondents, 17 disagreed while 9 selected ‘Don’t know’). Where further comments were provided, most respondents expressed the view that the same expectations that are placed on regular officers should be placed on probationary officers and their conduct should be assessed during their probationary period. A few respondents suggested that timescales relating to the investigation stages of misconduct allegations should not be set out in legislation.

“The 2 year probationary period is designed to train and develop new officers and assess their suitability to be confirmed in the rank of constable. Their suitability should include their conduct”

“It is important that probationer conduct is dealt with consistent with other serving police officers...”

“The quicker “bad apples” are outed the better for all concerned. Safe time, money and resources.”

### Recommendations suggested by respondents

Some respondents suggested that regular and probationary officers should have the same expectations placed on them.

## 4.4.21 Alternatives to suspension (3.7R to 3.7T)

### Recommendation

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**“A statutory suspension condition in England and Wales that temporary redeployment to alternative duties or an alternative location should have been considered as an alternative to suspension should be replicated in Scottish regulations in relation to all ranks of constable. Provision should also be made for regular review of the suspension of an officer.” (Recommendation 57, p. 465)**

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### Overview of responses

Of conditions which must be met before an officer is suspended, the most frequent condition selected by respondents was that temporary redeployment to alternative duties has been considered (chosen by 20 respondents), while the second most frequent condition selected was that a temporary alternative location to operate from has been considered (chosen by 14 respondents). Some respondents suggested that other conditions should be considered, such as conducting a risk assessment and considering the circumstances surrounding the incident.

“Person should appointment their choice of representative to assist them”  
“that the full circumstances have been considered and aftre that, suspension is considered proportionate”

Out of 33 respondents, 30 suggested that, if a condition must be met before it is recommended that an officer is suspended, then this should relate to all ranks of police officer. Furthermore, most respondents (21 out of 33) suggested that suspended officers should have their suspensions reviewed every 4 weeks.

### Recommendations suggested by respondents

No further suggestions were provided by respondents.

## 4.4.22 Special constables conduct regulations (3.8A to 3.8B)

### Recommendation

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**“[...] a revision of the Police Service of Scotland (Special Constables) Regulations 2013 in respect of special constable misconduct to align them with The Police Service of Scotland (Conduct) Regulations 2014. The intention would be to ensure consistency in assessment and investigation of misconduct by special constables and regular police officers.” (Misc. recommendation, p. 453)**

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### Overview of responses

31 out of 36 respondents agreed with the recommendation that conduct regulations for special constables should be revised to bring them in line with those for regular police officers. Respondents who were in favour of the recommendation argued that, if special constables have the same rights as regular constables, they should also have the same expectations placed on them.

“Special constables hold the same powers as any other constable and should be held to the same standards of professional conduct.”

“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.”

### Recommendations suggested by respondents

Some respondents suggested that regular and special constables should have the same expectations placed on them.

## 4.5 Liability for unlawful conduct

This section sets out the proposal to extend the liability for unlawful conduct to cover the rank of Chief Constable.

### 4.5.1 Liability for unlawful conduct (4.1A to 4.1B)

#### Recommendation

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**Clarifying the liability for unlawful conduct is not a recommendation in the Dame Elish Review. However the Scottish Government proposes a change to Section 24 of the Police and Fire Reform (Scotland) Act 2012 to make the SPA liable for any unlawful conduct by a Chief Constable. This would mean that a Chief Constable has the same protections as all other constables. It would also protect the victims of unlawful conduct when action is taken against the Chief Constable.**

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#### Overview of responses

The vast majority of respondents, 30 out of 34, agreed that liability for unlawful conduct should be extended to cover the rank of Chief Constable. Respondents provided several arguments, including that this would ensure victims are protected and that all ranks of police officer are treated equally. Some respondents disagreed that the liability should be extended, arguing that those holding the rank of Chief Constable should never need this protection.

“...[we] supports the suggested amendment and agrees that as a Constable, the Chief Constable is an office holder as opposed to an employee and as such, the suggested amendment provides for that office holder to be covered by the same terms Section 24 of the Police and Fire Reform (Scotland) Act 2012 provides for all other Constables.”

“The Chief Constable, and role model for the people he / she leads is still a police officer...”

“...The same rules/laws should apply to those at the very bottom to those at the very top.”

“As a senior representative of the Police he should not become liable at all”

#### Recommendations suggested by respondents

Some respondents suggested that all officers should be treated equally, regardless of rank.

## 4.6 Summary of unstructured responses

This section summarises some additional views from the consultation responses which were not submitted using the online consultation form and do not clearly align to a specific consultation question or recommendation. All such responses were submitted on behalf of organisations except one which outline the views raised during the engagement events. Although such responses were only a few in number and do not necessarily comment on specific recommendations, it is important that these views are still considered.

While the majority of views expressed in these responses are aligned to the findings described in the previous sections of this report, this section summaries some additional insights that did not conform to specific questions or recommendations.

A respondent stated that only the legislation that is strictly required should be adopted as unnecessary legislation can be costly and slow down processes.

“Furthermore, we would hope to see an approach adopted by the Scottish Government, whereby only that legislation strictly necessary to achieve the aims of the recommendations should be adopted. The Scottish Government must have confidence that the problems they are trying to fix exist and that any fix requires legislation as some of the proposals will have unintended consequences.”

Some respondents emphasised that the recommendations should be implemented with a focus on learning and development for police officers instead of punishment and prosecution.

“...simplification of the personnel and human resources arrangements for police officers are to be welcomed but should again be in the spirit of encouraging good performance rather than dictating abstract levels of conduct. It is counter-productive to foster an atmosphere of prosecution amongst staff, and instead there must be an emphasis on learning and improvement.”

Additional views voiced by respondents include that there needs to be further emphasis on equality and impact on minorities, which is particularly important in order to increase public confidence.

“...in relation to all of the proposed reforms, CRER would expect to see a clear and integral focus on equality for Black and minority ethnic people.”

## 5 Appendices

### 5.1 Appendix A: Summary of consultation questions

<b>Recommendation area</b>	<b>Consultation question number</b>
Code of ethics	1.1A – 1.1H
Duty of candour	1.2A – 1.2D
Duty of co-operation	1.2E – 1.2I
PIRC power to compel officers to interview	1.2J – 1.2K
Additional comments regarding duties of candour and co-operation	1.2L – 1.2N
Whistleblowing	1.3A – 1.3D
Legal Aid in Article 2 cases	1.4A – 1.4D
Death of a serving police officer (investigation)	1.5A – 1.5B
Definition of "person serving with the police"	1.6A – 1.6C
Definition of "a member of the public" who may make a complaint	1.6D – 1.6F
Changes to Police Investigations and Review Commissioner (PIRC) structure	2.1A – 2.1H
PIRC to be accountable to the Scottish Parliament for non-criminal matters	2.1I – 2.1N
Power to enable PIRC staff to access the Centurion database	2.2A – 2.2D
PIRC powers to call in an investigation of a complaint	2.2E – 2.2G
PIRC powers to investigate Police Scotland practices or policies	2.2H – 2.2K
PIRC power to make recommendations and corresponding duty on the Chief Constable to comply	2.2L – 2.2P
Cross-jurisdictional issues	2.3A
Gross misconduct proceedings to be held in public	3.1A – 3.1E
Protection of vulnerable witnesses in gross misconduct proceedings	3.1F – 3.1H
Outcome of gross misconduct proceedings to be made public	3.1I – 3.1J & 3.1N – 3.1P
Matters to be considered by a gross misconduct hearing	3.1K – 3.1M & 3.1Q – 3.1R

Composition of gross misconduct hearing panels	
Senior Officers	
Chief Superintendents	3.1S – 3.1DD
Non-senior officers below rank of Chief Superintendent	
Role of the Lord President	
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Additional comments regarding misconduct and gross misconduct proceedings	3.1EE, 3.1FF
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Continuation of gross misconduct proceedings if officer leaves	3.2A – 3.2G, 3.2L
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Continuation of disciplinary proceedings for former officers beyond 12 months	3.2H – 3.2J, 3.2L
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Barred and advisory lists	3.2K, 3.2L
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Appeals against determinations of gross misconduct	3.3A – 3.3C
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Accelerated misconduct hearings	3.4A – 3.4J
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Key stages of senior officer misconduct proceedings	3.5C
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Preliminary assessment function	3.5A – 3.5B
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Preliminary assessment considerations	3.5D – 3.5H
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Presentation of cases in senior officer gross misconduct hearings	3.5I – 3.5K
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PIRC power to recommend suspension of senior officers	3.5L – 3.5O
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Vexatious complainers	3.6A – 3.6B
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Provisions to issue statutory guidance relating to conduct	3.7A – 3.7F
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Review of regulations regarding disciplinary and grievance procedures	3.7G
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Joint misconduct proceedings	3.7H – 3.7M
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Misconduct allegations against probationers	3.7N – 3.7Q
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Alternatives to suspension	3.7R – 3.7T
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Special constables conduct regulations	3.8A – 3.8B
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Liability for unlawful conduct	4.1A – 4.1B
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## 5.2 Appendix B: Detailed quantitative analysis

This section summarises the volumes of responses by consultation question.

### 5.2.1 1.1A: Do you agree that there should be a statutory requirement for Police Scotland to have a Code of Ethics?

Respondent type	Yes	No	Don't know
Individual	26	4	2
Organisation	10	2	0
All responses	36	6	2

**Note:** Total respondents = 44

### 5.2.2 1.1C: Should it be possible to amend and/or update any statutory Code of Ethics when required?

Respondent type	Yes	No	Don't know
Individual	24	3	3
Organisation	11	1	0
All responses	35	4	3

**Note:** Total respondents = 42

### 5.2.3 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?

Respondent type	Chief Constable of Police Scotland	Scottish Police Authority (SPA)	The Chief Constable and SPA jointly	Other	Don't know
Individual	1	1	8	19	3
Organisation	1	1	8	1	0
All responses	2	2	16	20	3

**Note:** Total respondents = 43



#### 5.2.4 1.1E: If Police Scotland is required by law to have a Code of Ethics, should whoever is responsible for its preparation (as per question 1.1D above) be required to consult on it?

Respondent type	Yes	No	Don't know
Individual	26	2	3
Organisation	11	1	0
All responses	37	3	3

**Note:** Total respondents = 43

#### 5.2.5 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?

Respondent type	Yes	No	Don't know
Individual	24	3	3
Organisation	12	0	0
All responses	36	3	3

**Note:** Total respondents = 42

#### 5.2.6 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?

Respondent type	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Individual	21	5	1	0	2
Organisation	8	2	2	0	1
All responses	29	7	3	0	3

**Note:** Total respondents = 42

### 5.2.7 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?

Respondent type	Both Police Scotland as an organisation and individual officers	Individual officers	Police Scotland as an organisation	Don't know
Individual	20	0	8	2
Organisation	11	1	1	0
All responses	31	1	9	2

**Note:** Total respondents = 43

### 5.2.8 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?

Respondent type	Yes	No	Don't know
Individual	8	18	4
Organisation	3	10	0
All responses	11	28	4

**Note:** Total respondents = 43

### 5.2.9 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?

Respondent type	Yes	No	Don't know
Individual	12	15	3
Organisation	9	4	0
All responses	21	19	3

**Note:** Total respondents = 43

### 5.2.10 1.2E: Should police officers have a statutory duty of co-operation to assist during investigations, inquiries and formal proceedings?

Respondent type	Yes	No	Don't know
Individual	21	4	4
Organisation	12	1	0
All responses	33	5	4

**Note:** Total respondents = 42

### 5.2.11 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?

Respondent type	Yes	No	Don't know
Individual	20	6	3
Organisation	8	5	0
All responses	28	11	3

**Note:** Total respondents = 42

### 5.2.12 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)?

Respondent type	Yes, for both police staff and former police staff	Yes, for current police staff but not former police staff	No	Don't know
Individual	21	3	3	3
Organisation	7	6	0	0
All responses	28	9	3	3

**Note:** Total respondents = 43

### 5.2.13 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?

Respondent type	Yes, officers should be required to participate openly	Yes, officers should be required to participate promptly	Other	No	Don't know
Individual	21	21	4	3	2
Organisation	9	9	2	1	0
All responses	30	30	6	4	2

**Note:** Respondents could select more than one option, therefore the total number of respondents that answered this question cannot be determined.

### 5.2.14 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?

Respondent type	Yes	No	Don't know
Individual	9	16	4
Organisation	3	10	0
All responses	12	26	4

**Note:** Total respondents = 42

### 5.2.15 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?

Respondent type	Yes	No	Don't know
Individual	25	2	3
Organisation	11	2	0
All responses	36	4	3

**Note:** Total respondents = 43

**5.2.16 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?**

Respondent type	PIRC to determine timescales	Timescales to be set in legislation	Other	Don't know
Individual	1	25	2	2
Organisation	3	7	3	0
All responses	4	32	5	2

**Note:** Total respondents = 43

**5.2.17 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?**

Respondent type	Yes	No	Don't know
Individual	22	3	5
Organisation	9	4	0
All responses	31	7	5

**Note:** Total respondents = 43

**5.2.18 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?**

Respondent type	Yes	No	Don't know
Individual	23	4	3
Organisation	9	3	1
All responses	32	7	4

**Note:** Total respondents = 43

**5.2.19 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?**

Respondent type	Yes, with another body (please specify)	Yes, with the PIRC	No	Don't know
Individual	17	11	0	2
Organisation	2	9	1	1
All responses	19	20	1	3

**Note:** Total respondents = 43

**5.2.20 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?**

Respondent type	Yes, with another body (please specify)	Yes, with the PIRC	No	Don't know
Individual	18	10	1	1
Organisation	2	9	1	1
All responses	20	19	2	2

**Note:** Total respondents = 43

**5.2.21 1.3C: Should concerns raised about wrongdoing within policing in Scotland (“whistleblowing concerns”) be audited by an independent third-party police oversight organisation?**

Respondent type	Yes, with another body (please specify)	Yes, with the PIRC	No	Don't know
Individual	16	9	1	2
Organisation	2	8	1	2
All responses	18	17	2	4

**Note:** Total respondents = 41

**5.2.22 1.4A: Should legal aid be available to all families of people who die in police custody or following police contact, regardless of their ability to pay?**

Respondent type	Yes	No	Don't know
Individual	23	7	0
Organisation	8	1	1
All responses	31	8	1

**Note:** Total respondents = 40

**5.2.23 1.4C: Should there be an opportunity in Article 2 cases, where appropriate, for family and common interest groups to receive civil legal aid funding on a group basis?**

Respondent type	Yes	No	Don't know
Individual	22	6	2
Organisation	7	0	2
All responses	29	6	4

**Note:** Total respondents = 39

**5.2.24 1.5A: Should the existing law be clarified regarding PIRC's powers to investigate an incident involving the death of a serving police officer?**

Respondent type	Yes	No	Don't know
Individual	17	4	6
Organisation	5	3	0
All responses	22	7	6

**Note:** Total respondents = 35

**5.2.25 1.6A: Should the term "Person serving with the police" be more clearly defined?**

Respondent type	Yes	No	Don't know
Individual	25	4	1
Organisation	12	1	0
All responses	37	5	1

**Note:** Total respondents = 43

### 5.2.26 1.6B: Should the definition include clarity on PIRC powers to investigate the following people?

Respondent type	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
Individual	24	22	21	6
Organisation	11	12	10	3
All responses	35	34	31	9

**Note:** Respondents could select more than one option, therefore the total number of respondents that answered this question cannot be determined.

### 5.2.27 1.6D: Should the term “Member of the public” be more clearly defined, to make clear who may make a relevant complaint?

Respondent type	Yes	No	Don't know
Individual	19	7	3
Organisation	12	1	0
All responses	31	8	3

**Note:** Total respondents = 42

### 5.2.28 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?

Respondent type	Yes	No	Don't know
Individual	18	9	3
Organisation	11	1	0
All responses	29	10	3

**Note:** Total respondents = 42



### 5.2.29 2.1A: Should the PIRC should be re-designated as a Commission?

Respondent type	Yes	No	Don't know
Individual	21	4	3
Organisation	8	1	2
All responses	29	5	5

**Note:** Total respondents = 39

### 5.2.30 2.1B: If PIRC is re-designated as a Commission, do you agree that two deputy Commissioners should be appointed?

Respondent type	Yes	No	Don't know
Individual	20	6	2
Organisation	7	2	2
All responses	27	8	4

**Note:** Total respondents = 39

### 5.2.31 2.1G: Do you agree that a statutory Board should be created?

Respondent type	Yes	No	Don't know
Individual	20	3	4
Organisation	5	4	2
All responses	25	7	6

**Note:** Total respondents = 38

### 5.2.32 2.1I: How do you think that the Police Investigations and Review Commissioner (PIRC) should be appointed?

Respondent type	Appointment made on nomination of the Scottish Parliament	Remain a Scottish Ministerial appointment	Don't know
Individual	14	6	8
Organisation	7	3	1
All responses	21	9	9

**Note:** Total respondents = 39

**5.2.33 2.1K: Do you agree that PIRC should be appointed by Her Majesty the Queen?**

Respondent type	Yes	No	Don't know
Individual	9	13	6
Organisation	6	2	1
All responses	15	15	7

**Note:** Total respondents = 38

**5.2.34 2.1M: Where do you think that accountability arrangements for PIRC should sit?**

Respondent type	Remain with the Scottish Ministers	Transfer to the Scottish Parliament	Don't know
Individual	1	23	4
Organisation	3	7	1
All responses	4	30	5

**Note:** Total respondents = 39

**5.2.35 2.2A: Should PIRC be able to access the Police Scotland complaints and conduct database remotely?**

Respondent type	Yes	No	Don't know
Individual	22	3	1
Organisation	10	1	0
All responses	32	4	1

**Note:** Total respondents = 37

**5.2.36 2.2E: Do you agree that the PIRC requires this additional power to call in an investigation of a complaint?**

Respondent type	Yes	No	Don't know
Individual	21	3	2
Organisation	9	1	2
All responses	30	4	4

**Note:** Total respondents = 38

### 5.2.37 2.2F: Should the PIRC be able to investigate a complaint against Police Scotland in certain circumstances?

Respondent type	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, if there is sufficient evidence that Police Scotland has not dealt with a complaint properly	Yes, Other	No	Don't know
Individual	23	20	22	8	0	0
Organisation	8	10	9	0	1	1
All responses	31	30	31	8	1	1

**Note:** Respondents could select more than one option, therefore the total number of respondents that answered this question cannot be determined.

### 5.2.38 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?

Respondent type	Yes	No	Don't know
Individual	20	4	2
Organisation	7	4	1
All responses	27	8	3

**Note:** Total respondents = 38

### 5.2.39 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?

Respondent type	Yes	No	Don't know
Individual	20	4	2
Organisation	7	4	1
All responses	27	8	3

**Note:** Total respondents = 38

**5.2.40 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?**

Respondent type	Yes	No	Don't know
Individual	6	16	4
Organisation	7	3	2
All responses	13	19	6

**Note:** Total respondents = 38

**5.2.41 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?**

Respondent type	Yes, following a review	Yes, following an audit	Yes, following both a review and an audit	No	Don't know
Individual	6	0	13	3	4
Organisation	1	0	6	4	1
All responses	7	0	19	7	5

**Note:** Total respondents = 38

**5.2.42 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?**

Respondent type	Yes, except for another reason (please specify)	Yes, unless there is an overriding operational or practical reason not to	Yes, with no restrictions	No	Don't know
Individual	1	8	15	2	0
Organisation	1	7	2	1	1
All responses	2	15	17	3	1

**Note:** Total respondents = 38

**5.2.43 2.2N: Should Police Scotland have to respond to recommendations made by the PIRC following a review of police complaints handling?**

Respondent type	Yes	No	Don't know
Individual	23	2	1
Organisation	11	1	0
All responses	34	3	1

**Note:** Total respondents = 38

**5.2.44 2.2O: Should Police Scotland have to respond to recommendations made by the PIRC following an audit of police complaints handling?**

Respondent type	Yes	No	Don't know
Individual	22	3	1
Organisation	11	1	0
All responses	33	4	1

**Note:** Total respondents = 38

**5.2.45 3.1A: Should police officer gross misconduct hearings be held in public?**

Respondent type	Yes	No	Don't know
Individual	18	10	1
Organisation	6	5	1
All responses	24	15	2

**Note:** Total respondents = 41

**5.2.46 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?**

Respondent type	All ranks of officers	Senior officers only	Don't know
Individual	22	5	2
Organisation	7	0	2
All responses	29	5	4

**Note:** Total respondents = 38

**5.2.47 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?**

Respondent type	Yes	No	Don't know
Individual	15	12	2
Organisation	8	1	2
All responses	23	13	4

**Note:** Total respondents = 40

**5.2.48 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)?**

Respondent type	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Individual	15	3	3	2	4
Organisation	9	2	0	0	1
All responses	24	5	3	2	5

**Note:** Total respondents = 39

**5.2.49 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)?**

Respondent type	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Individual	16	6	2	1	1
Organisation	10	1	0	0	1
All responses	26	7	2	1	2

**Note:** Total respondents = 38

**5.2.50 3.1I: To what extent do you agree or disagree the outcome of gross misconduct proceedings should be made public?**

Respondent type	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Individual	20	3	0	1	2
Organisation	8	2	0	2	1
All responses	28	5	0	3	3

**Note:** Total respondents = 39

**5.2.51 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?**

Respondent type	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Individual	17	5	3	0	1
Organisation	5	2	1	1	1
All responses	22	7	4	1	2

**Note:** Total respondents = 36

**5.2.52 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?**

Respondent type	Yes	No	Don't know
Individual	18	7	1
Organisation	6	4	2
All responses	24	11	3

**Note:** Total respondents = 38

**5.2.53 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?**

Respondent type	Yes	No	Don't know
Individual	19	4	3
Organisation	7	3	2
All responses	26	7	5

**Note:** Total respondents = 38

**5.2.54 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?**

Respondent type	Made available online for at least 28 days	Made available online for a different period	Don't know
Individual	11	12	2
Organisation	5	1	4
All responses	16	13	6

**Note:** Total respondents = 35



**5.2.55 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?**

Respondent type	Yes	No	Don't know
Individual	21	1	3
Organisation	9	1	2
All responses	30	2	5

**Note:** Total respondents = 37

**5.2.56 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?**

Respondent type	A senior expert in policing (other than HM Chief Inspector)	An HR professional	An independent lay person	An independent legally qualified person	A member of the SPA	HM Chief Inspector of Constabulary	Other
Individual	1	1	2	17	0	0	4
Organisation	1	0	0	10	0	0	0
All responses	2	1	2	27	0	0	4

**Note:** Total respondents = 36

**5.2.57 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?**

Respondent type	An independent legally qualified person	A member of the SPA	HM Chief Inspector of Constabulary	A senior expert in policing (other than HM Chief Inspector)	An independent lay person	An HR professional	Other
Individual	13	5	5	11	13	7	2
Organisation	4	2	2	10	5	5	0
All responses	17	7	7	21	18	12	2

**Note:** Respondents could select more than one option, therefore the total number of respondents that answered this question cannot be determined.

**5.2.58 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?**

Respondent type	A senior expert in policing	An HR professional	An independent lay person	An independent legally qualified person	A member of the SPA	A senior officer from another police service	A retired senior officer	Other
Individual	1	0	3	18	0	0	0	2
Organisation	0	1	0	5	0	0	0	2
All responses	1	1	3	23	0	0	0	4

**Note:** Total respondents = 32

**5.2.59 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?**

Respondent type	An independent legally qualified person	A member of the SPA	A senior expert in policing	A senior officer from another police service	A retired senior officer	An independent lay person	An HR professional	Other
Individual	14	4	6	4	3	11	5	2
Organisation	4	2	6	3	1	6	4	3
All responses	18	6	12	7	4	17	9	5

**Note:** Respondents could select more than one option, therefore the total number of respondents that answered this question cannot be determined.

**5.2.60 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?**

Respondent type	A serving officer of the rank of superintendent or above who is at least two ranks higher than the subject officer	An independent lay person	An independent legally qualified person	A member of the SPA	An HR professional	Other
Individual	1	2	18	0	0	2
Organisation	2	0	6	0	0	0
All responses	3	2	24	0	0	2

**Note:** Total respondents = 31

**5.2.61 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?**

Respondent type	An independent legally qualified person	A member of the SPA	A serving officer of the rank of superintendent or above who is at least two ranks higher than the subject officer	An independent lay person	An HR professional	Other
Individual	14	1	5	16	5	2
Organisation	2	3	5	6	4	1
All responses	16	4	10	22	9	3

**Note:** Respondents could select more than one option therefore the total number of respondents that answered this question cannot be determined.

**5.2.62 3.1BB: Do you agree that the Lord President should appoint the Chair of a misconduct hearing which is considering allegations against officers?**

Respondent type	Yes, for senior officers	Yes, for Chief Superintendents	Yes, for non-senior officers below the rank of Chief Superintendent	No, not for any police officer	Don't know
Individual	13	12	11	7	4
Organisation	8	6	4	3	0
All responses	21	18	15	10	4

**Note:** Respondents could select more than one option, therefore the total number of respondents that answered this question cannot be determined.

### 5.2.63 3.1CC: Do you agree that the Lord President should appoint the panel of a misconduct hearing which is considering allegations against officers?

Respondent type	Yes, for senior officers	Yes, for Chief Superintendents	Yes, for non-senior officers below the rank of Chief Superintendent	No, not for any police officer	Don't know
Individual	11	11	10	8	5
Organisation	6	4	4	5	1
All responses	17	15	14	13	6

**Note:** Respondents could select more than one option, therefore the total number of respondents that answered this question cannot be determined.

### 5.2.64 3.2A: Should it be possible to continue, or begin, gross misconduct proceedings against former officers?

Respondent type	Yes, but only for rank of Chief Superintendent and above	Yes, for all ranks of police officers	Yes, but only for senior officers	No, not for any police officer	Don't know
Individual	1	18	0	4	1
Organisation	0	8	0	3	1
All responses	1	26	0	7	2

**Note:** Total respondents = 36

**5.2.65 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)?**

Respondent type	Chief Constable	The Police Investigations and Review Commissioner (PIRC)	The Scottish Police Authority (SPA)	Other	Don't know
Individual	2	11	6	6	3
Organisation	4	3	3	1	3
All responses	6	14	9	7	6

**Note:** Respondents could select more than one option, therefore the total number of respondents that answered this question cannot be determined.

**5.2.66 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?**

Respondent type	Yes	No	Don't know
Individual	13	8	3
Organisation	7	3	1
All responses	20	11	4

**Note:** Total respondents = 35

**5.2.67 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)?**

Respondent type	Yes, if gross misconduct hearings were to be held in public	Yes, if gross misconduct hearings were to be chaired by a legally qualified chair	No	Don't know
Individual	4	5	14	3
Organisation	1	1	9	2
All responses	5	6	23	5

**Note:** Respondents could select more than one option, therefore the total number of respondents that answered this question cannot be determined.

**5.2.68 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?**

Respondent type	Yes	No	Don't know
Individual	17	6	1
Organisation	8	3	1
All responses	25	9	2

**Note:** Total respondents = 36

**5.2.69 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?**

Respondent type	Yes, but only for senior officers	Yes, but only for frank of Chief Superintendent and above	Yes, for all ranks of police officers	No, not for any police officer	Don't know
Individual	1	0	18	4	1
Organisation	0	0	8	3	1
All responses	1	0	26	7	2

**Note:** Total respondents = 36

**5.2.70 3.2K: Should the Scottish Government work with the UK Government to adopt barred and advisory lists and other potential models?**

Respondent type	Yes, by using the Barred and Advisory Lists model	Yes, by adopting other measures	No	Don't know
Individual	21	3	0	5
Organisation	7	1	1	3
All responses	28	4	1	8

**Note:** Respondents could select more than one option, therefore the total number of respondents that answered this question cannot be determined.



**5.2.71 3.3A: Do you agree that, given the transfer of the Police Appeals Tribunal to the Scottish Tribunals, senior officer conduct regulations should be revised to ensure that for all gross misconduct hearings where there has been a finding of gross misconduct, there should be only one route of appeal i.e. to the Police Appeals Tribunal?**

Respondent type	Yes, for senior officer regulations	No, the regulations should not be revised
Individual	18	5
Organisation	7	1
All responses	25	6

**Note:** Total respondents = 31

**5.2.72 3.3B: Do you agree that the same route of appeal to the Police Appeals Tribunal should be included in regulations for findings of misconduct against senior officers or should the appeal process be managed by the independent legally chaired panel?**

Respondent type	Yes, to the Police Appeals Tribunal	No, by the independent legally-chaired panel	Don't know
Individual	8	10	5
Organisation	7	1	0
All responses	15	11	5

**Note:** Total respondents = 31

**5.2.73 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?**

Respondent type	Yes	No	Don't know
Individual	17	6	1
Organisation	5	2	2
All responses	22	8	3

**Note:** Total respondents = 34

**5.2.74 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?**

Respondent type	Yes	No	Don't know
Individual	20	2	2
Organisation	7	1	2
All responses	27	3	4

**Note:** Total respondents = 34

**5.2.75 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?**

Respondent type	Assistant Chief Constable (ACC) responsible for conduct matters	Chief Constable	Deputy Chief Constable (DCC) responsible for conduct matters	Police Scotland's Professional Standards Department	Other	Don't know
Individual	1	1	2	3	12	3
Organisation	0	0	3	2	1	3
All responses	1	1	5	5	13	6

**Note:** Total respondents = 31

**5.2.76 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?**

Respondent type	Chief Constable	The Police Investigations and Review Commissioner	The Scottish Police Authority	Other	Don't know
Individual	0	6	1	11	3
Organisation	3	1	1	2	3
All responses	3	7	2	13	6

**Note:** Total respondents = 31

**5.2.77 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?**

Respondent type	ACC responsible for conduct matters	DCC responsible for conduct matters	Police Scotland's Professional Standards Department	Chief Constable	Other	Don't know
Individual	1	2	3	0	11	4
Organisation	0	4	2	0	1	2
All responses	1	6	5	0	12	6

**Note:** Total respondents = 30

**5.2.78 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?**

Respondent type	Chief Constable	The PIRC	The SPA	Other	Don't know
Individual	1	11	2	4	2
Organisation	2	2	1	2	2
All responses	3	13	3	6	4

**Note:** Total respondents = 29

**5.2.79 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?**

Respondent type	Yes	No	Don't know
Individual	19	3	1
Organisation	7	1	2
All responses	26	4	3

**Note:** Total respondents = 33

**5.2.80 3.4I: Should the Scottish Ministers consider (either in legislation or guidance) applying indicative timescales to the investigation of misconduct allegations?**

Respondent type	Yes	No	Don't know
Individual	19	4	1
Organisation	8	1	1
All responses	27	5	2

**Note:** Total respondents = 34

**5.2.81 3.4J: Where an officer is convicted of a criminal offence which would constitute gross misconduct, should the Chairing Panel or Chairing Constable be able to move to dismiss that officer immediately, without separate misconduct proceedings?**

Respondent type	Yes	No	Don't know
Individual	14	8	2
Organisation	5	4	1
All responses	19	12	3

**Note:** Total respondents = 34

**5.2.82 3.5A: To what extent do you agree or disagree that the preliminary assessment of misconduct allegations made against senior police officers should be carried out by the PIRC?**

Respondent type	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Individual	14	3	2	0	4
Organisation	5	2	0	0	2
All responses	19	5	2	0	6

**Note:** Total respondents = 32

**5.2.83 3.5B: If the PIRC is to carry out the preliminary assessment of misconduct allegations made against senior police officers, should the preliminary assessment of an allegation or complaint be decided on by the Commissioner or their Deputy?**

Respondent type	Yes	No	Don't know
Individual	15	4	3
Organisation	6	1	1
All responses	21	5	4

**Note:** Total respondents = 30

### 5.2.84 3.5C: Should the PIRC take on responsibility for key aspects of misconduct and gross misconduct proceedings for senior officers?

Respondent type	Yes, for receipt of complaints and allegations, where appropriate, referral to an independent legally chaired panel	Yes, for preliminary assessment	Yes, for referral to COPFS of criminal allegations	Yes, for referral to an independent legally chaired panel where appropriate if there is a disciplinary hearing subsequent to referral to COPFS	No	Don't know
Individual	18	8	10	12	5	2
Organisation	6	7	6	7	1	0
All responses	24	15	16	19	6	2

**Note:** Respondents could select more than one option, therefore the total number of respondents that answered this question cannot be determined.

### 5.2.85 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?

Respondent type	Yes, for both senior officers and non-senior officers	Yes, for non-senior officers	Yes, for senior officers	No, not for any police officers	Don't know
Individual	0	5	2	14	2
Organisation	2	2	2	3	1
All responses	2	7	4	17	3

**Note:** Total respondents = 33

**5.2.86 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?**

Respondent type	Yes, for both senior officers and non-senior officers	Yes, for non-senior officers	Yes, for senior officers	No, not for any police officers	Don't know
Individual	0	6	3	12	2
Organisation	3	2	3	1	1
All responses	3	8	6	13	3

**Note:** Total respondents = 33

**5.2.87 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?**

Respondent type	Yes, for both senior officers and non-senior officers	Yes, for non-senior officers	Yes, for senior officers	No, not for any police officers	Don't know
Individual	0	8	2	10	2
Organisation	3	2	3	2	1
All responses	3	10	5	12	3

**Note:** Total respondents = 33

**5.2.88 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?**

Respondent type	Yes, for non-senior officers	Yes, for senior officers	No, not for any police officers	Don't know
Individual	7	2	11	2
Organisation	2	4	2	1
All responses	9	6	13	3

**Note:** Total respondents = 31

**5.2.89 3.5I: Do you agree that the PIRC should be able to present a case at a senior officer gross misconduct hearing?**

Respondent type	Yes	No	Don't know
Individual	19	2	1
Organisation	7	2	1
All responses	26	4	2

**Note:** Total respondents = 32

**5.2.90 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?**

Respondent type	Yes	No	Don't know
Individual	21	1	2
Organisation	9	0	1
All responses	30	1	3

**Note:** Total respondents = 34



**5.2.91 3.5L: Should the PIRC have the ability to recommend the suspension of a senior officer?**

Respondent type	Yes	No	Don't know
Individual	21	3	0
Organisation	8	2	0
All responses	29	5	0

**Note:** Total respondents = 34

**5.2.92 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?**

Respondent type	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Individual	9	3	4	4	3
Organisation	4	1	1	2	2
All responses	13	4	5	6	5

**Note:** Total respondents = 33

**5.2.93 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?**

Respondent type	Yes	No	Don't know
Individual	19	3	0
Organisation	10	0	0
All responses	29	3	0

**Note:** Total respondents = 32

**5.2.94 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?**

Respondent type	Yes	No	Don't know
Individual	18	4	2
Organisation	6	2	2
All responses	24	6	4

**Note:** Total respondents = 34

**5.2.95 3.7A: Should the Scottish Ministers be able to issue statutory guidance in respect of conduct?**

Respondent type	Yes	No	Don't know
Individual	17	2	2
Organisation	10	1	0
All responses	27	3	2

**Note:** Total respondents = 32

**5.2.96 3.7B: If the Scottish Ministers are to be able to issue statutory guidance, should they be required to consult on any such guidance?**

Respondent type	Yes	No	Don't know
Individual	18	0	3
Organisation	10	0	0
All responses	28	0	3

**Note:** Total respondents = 31

**5.2.97 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?**

Respondent type	Yes	No	Don't know
Individual	16	0	3
Organisation	11	0	0
All responses	27	0	3

**Note:** Total respondents = 30

**5.2.98 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?**

Respondent type	Yes	No	Don't know
Individual	17	0	2
Organisation	10	1	0
All responses	27	1	2

**Note:** Total respondents = 30

**5.2.99 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)?**

Respondent type	Yes	No	Don't know
Individual	15	0	4
Organisation	10	1	0
All responses	25	1	4

**Note:** Total respondents = 30

**5.2.100 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?**

Respondent type	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Individual	14	3	4	1	1
Organisation	3	2	3	1	0
All responses	17	5	7	2	1

**Note:** Total respondents = 32

**5.2.101 3.7H: Should it be possible for joint misconduct proceedings to be held to deal with any number or rank of officers?**

Respondent type	Yes	No	Don't know
Individual	16	4	2
Organisation	5	2	3
All responses	21	6	5

**Note:** Total respondents = 32

### 5.2.102 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?

Respondent type	Assistant Chief Constable responsible for conduct matters	Chief Constable	Deputy Chief Constable responsible for conduct matters	Police Scotland's Professional Standards Division	Other	Don't know
Individual	1	1	2	4	6	6
Organisation	1	0	2	1	2	1
All responses	2	1	4	5	8	7

**Note:** Total respondents = 27

### 5.2.103 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)?

Respondent type	Yes, if gross misconduct hearings for senior officers were to be chaired by a legally qualified chair	Yes, if gross misconduct hearings were to be held in public for senior officers only	No	Don't know
Individual	1	2	13	4
Organisation	0	0	5	1
All responses	1	2	18	5

**Note:** Total respondents = 26

**5.2.104 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?**

Respondent type	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Individual	14	0	4	3	3
Organisation	5	2	1	0	1
All responses	19	2	5	3	4

**Note:** Total respondents = 33

**5.2.105 3.7O: If allegations of misconduct are to be dealt with during an officer's probation period, how should these be dealt with?**

Respondent type	Through the conduct regulations which all other officers are subject to when allegations of misconduct are made	Through the regulations which govern probation	Other	Don't know
Individual	12	7	3	1
Organisation	3	5	0	1
All responses	15	12	3	2

**Note:** Total respondents = 32

**5.2.106 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 3.4I)?**

Respondent type	Yes	No	Don't know
Individual	4	12	7
Organisation	2	5	2
All responses	6	17	9

**Note:** Total respondents = 32

### 5.2.107 3.7R: Should there be a condition which must be met before an officer is suspended?

Respondent type	Yes, that temporary redeployment to alternative duties has been considered	Yes, that a temporary alternative location to operate from has been considered	Yes, Other	No	Don't know
Individual	12	8	3	6	3
Organisation	8	6	2	0	2
All responses	20	14	5	6	5

**Note:** Respondents could select more than one option, therefore the total number of respondents that answered this question cannot be determined.

### 5.2.108 3.7S: If a condition must be met before it is recommended that an officer is suspended, which officers should this relate to?

Respondent type	All ranks of officers	Senior officers only	Don't know
Individual	22	0	1
Organisation	8	0	2
All responses	30	0	3

**Note:** Total respondents = 33

### 5.2.109 3.7T: Should all suspended officers have the terms of their suspensions reviewed regularly?

Respondent type	Yes, suspension should be reviewed every 4 weeks	Yes, suspension should be reviewed on another time frame (please specify)	No	Don't know
Individual	16	3	2	3
Organisation	5	1	0	3
All responses	21	4	2	6

**Note:** Total respondents = 33

**5.2.110 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?**

Respondent type	Yes	No	Don't know
Individual	23	2	1
Organisation	8	1	1
All responses	31	3	2

**Note:** Total respondents = 36

**5.2.111 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?**

Respondent type	Yes	No	Don't know
Individual	22	3	0
Organisation	8	0	1
All responses	30	3	1

**Note:** Total respondents = 34



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