

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

November 2022

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

### Summary of 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 Introduction

This report summarises 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>1</sup>.

Through the preliminary report<sup>2</sup> (June 2019) and final report (November 2020)<sup>1</sup>, 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>3</sup>.

According to the third thematic progress report published in June 2022, 44 of the 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>4</sup>. The Scottish Government launched a public consultation on 24 May 2022 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>5</sup>.

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

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<sup>1</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>2</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>3</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>4</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>5</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/>

## **2 Methodology**

### **2.1 Data processing**

The consultation received 55 responses, 33 of which came from individuals and 22 came from individuals on behalf of organisations. All responses were treated equally regardless of how they were submitted. During the manual review of responses, the research team screened responses 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.

### **2.2 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 a team of researchers, with thematic analysis of each response being conducted to capture the main opinions expressed by respondents as well as to understand the reasoning behind answers. This included ensuring every response was reflected in the analysis, reading beyond grammar or spelling mistakes and capturing the main ideas and themes regardless of difficulty in distilling the information. Any practical recommendations made by respondents relating to the design and implementation of the legislation were also extracted.

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

### **2.3 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. Quantitative analysis was conducted to determine the number of respondents selecting each option for each question, providing breakdowns on whether respondents were organisations or individuals.

### 3 Summary of findings

This section summarises the findings of the consultation analysis, organised according to the groupings of recommendations of legislative change as set out in the consultation.

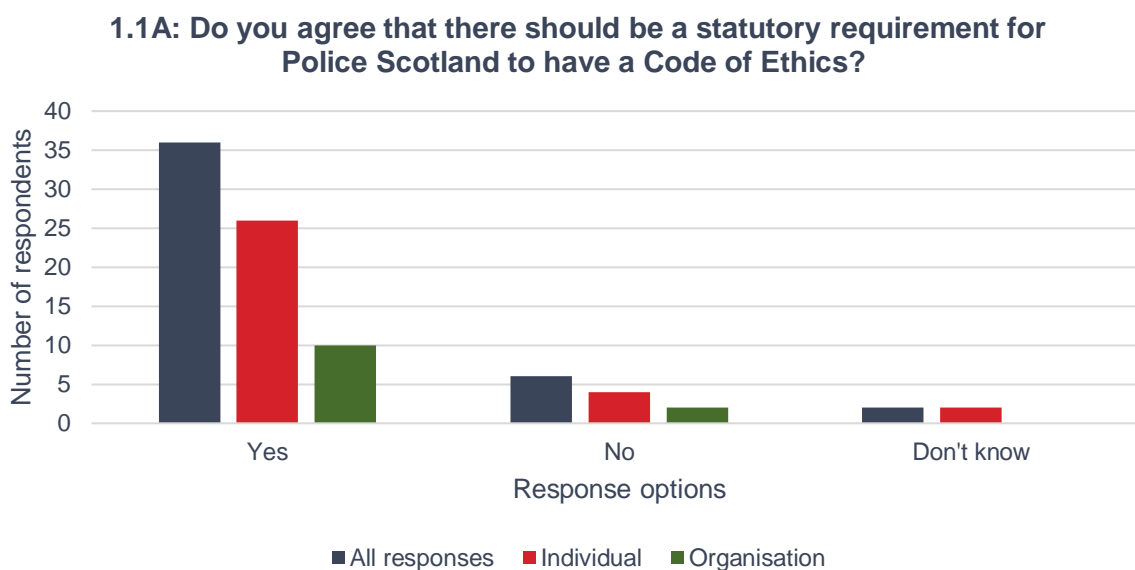
#### 3.1 Rights and Ethics

In summary, respondents generally agreed with the recommendations regarding rights and ethics.

There was broad agreement among respondents in relation to the Code of Ethics. This included that there should be a statutory requirement for Police Scotland to have a Code of Ethics, that it should be possible to amend it as necessary and the party responsible for its preparation should be required to consult on it. Respondents reasoned that this would emphasise the importance of these values within Police Scotland and remove ambiguity associated with policing standards.

“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.”

Figure 1. Shows the number of respondents that selected each response option for question 1.1A categorised by respondent type.

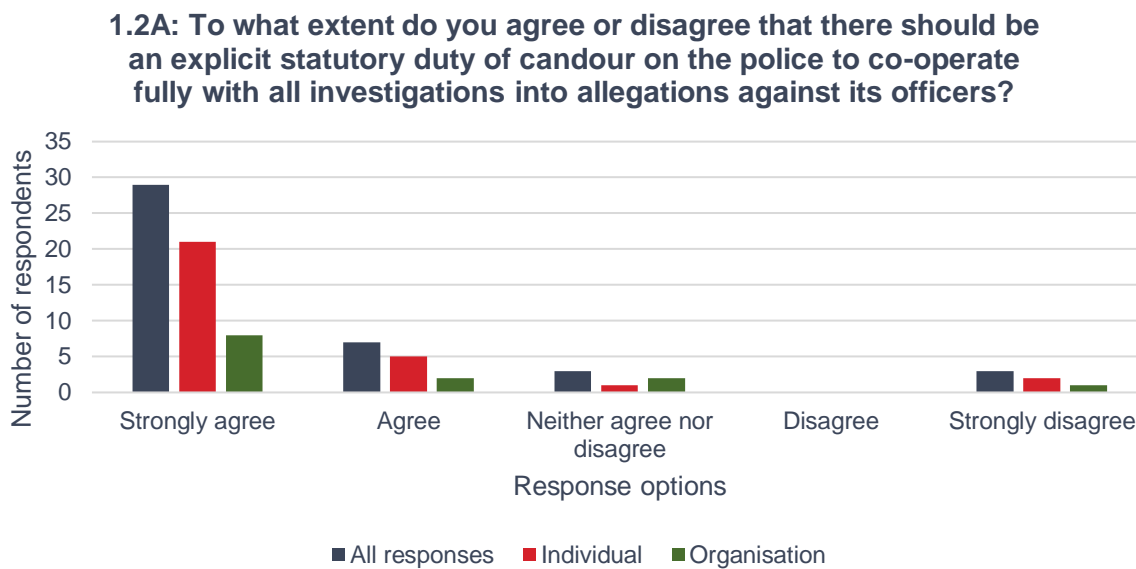


However, consensus was less clear regarding who should be responsible for preparing the Code of Ethics. Responses on behalf of organisations suggested that this should be a joint responsibility between the Chief Constable and the Scottish Police Authority (SPA), while responses from individuals stated that this should be done by a different organisation, which some specified should be an independent body.

Respondents also agreed that duty of candour should become statutory. There was also agreement among most respondents that this duty should be placed on both

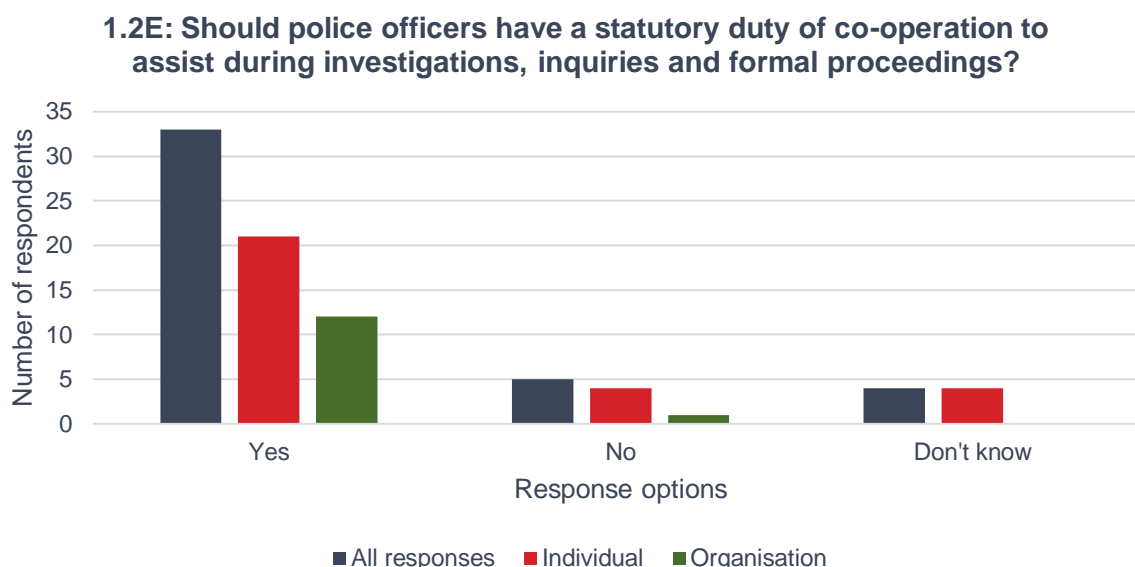
Police Scotland as an organisation as well as on individual officers. Furthermore, most respondents disagreed that the duty should relate only to incidents involving on-duty officers. However, there was less consensus among respondents on whether the duty should only apply to an officer whose status as a witness has been confirmed. Responses on behalf of organisations were more likely to agree while responses provided by individuals tended to disagree.

Figure 2. Shows the number of respondents that selected each response option for question 1.2A categorised by respondent type.



In relation to the duty of co-operation, respondents agreed that this duty should become statutory. Overall respondents suggested that it should be applicable to both current and former police officers and staff, however there was less consensus among respondent organisations whether this should be the case. Furthermore, respondents were more likely to disagree that the statutory duty of co-operation should only apply to on-duty officers.

Figure 3. Shows the number of respondents that selected each response option for question 1.2E categorised by respondent type.

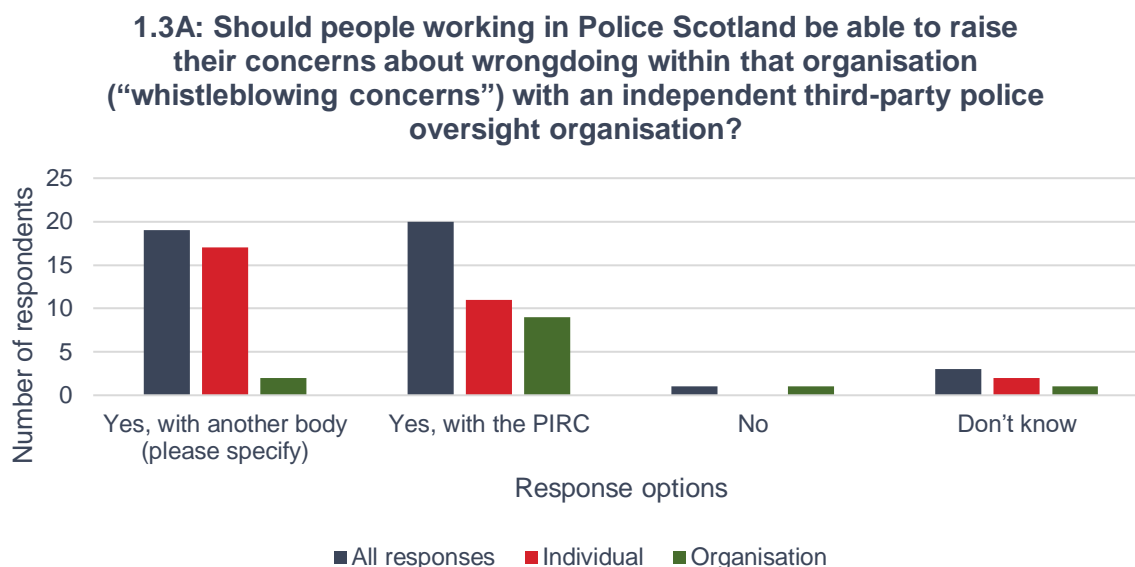


There was further agreement among respondents that officers should be required to participate openly and promptly in investigations and the Police Investigations and Review Commissioner (PIRC) should have the power to compel officers to attend interviews within a reasonable timescale set in legislation. Lastly, most respondents agreed that the Scottish Government should consider making amendments to the constable’s declaration and the Standards of Professional Behaviour to reflect these new obligations.

In relation to the recommendations concerning whistleblowing, there was clear consensus that people working within both Police Scotland and the SPA should be able to raise wrongdoing concerns with an independent third-party oversight organisation. Furthermore, it was suggested that this third-party should audit wrongdoing concerns within policing in Scotland. However, there was less consensus on who should be responsible for this oversight. Responses by organisations suggested that this body should be the PIRC while individuals preferred a different body, with some suggesting an independent third-party. Among respondent individuals, some expressed concern that the PIRC would not be sufficiently impartial for this responsibility. Regardless of what body is responsible, many respondents emphasised that the oversight organisation should be able to provide whistleblowers with legal protection.

“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.”

Figure 4. Shows the number of respondents that selected each response option for question 1.3A categorised by respondent type.



Respondents were in agreement that all families of people who die in police custody or following police contact should receive legal aid regardless of their ability to pay. It was also suggested that there should be an opportunity to receive such funding on a group basis. It was argued that such changes are needed to ensure that there is no financial barrier for people seeking legal representation and that means-testing legal aid is unfair and intrusive.

“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.”

There was general agreement with recommendations to clarify important definitions and extent of the PIRC’s powers. Most respondents suggested that the term “person serving with the police” should be clarified to determine whether the PIRC can investigate officers who have since retired, resigned or were off-duty at the time of an incident, with some respondents suggesting that the definition should be extended to include these characteristics.

It was also suggested that it should be made clear whether the body can investigate the death of a serving police officer, however there was less clear consensus among respondent organisations whether this should be the case. Lastly, it was suggested that off-duty police officers should still be able to make a complaint as a member of the public with some respondents reasoning that off-duty officers should have the same rights as other citizens.

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



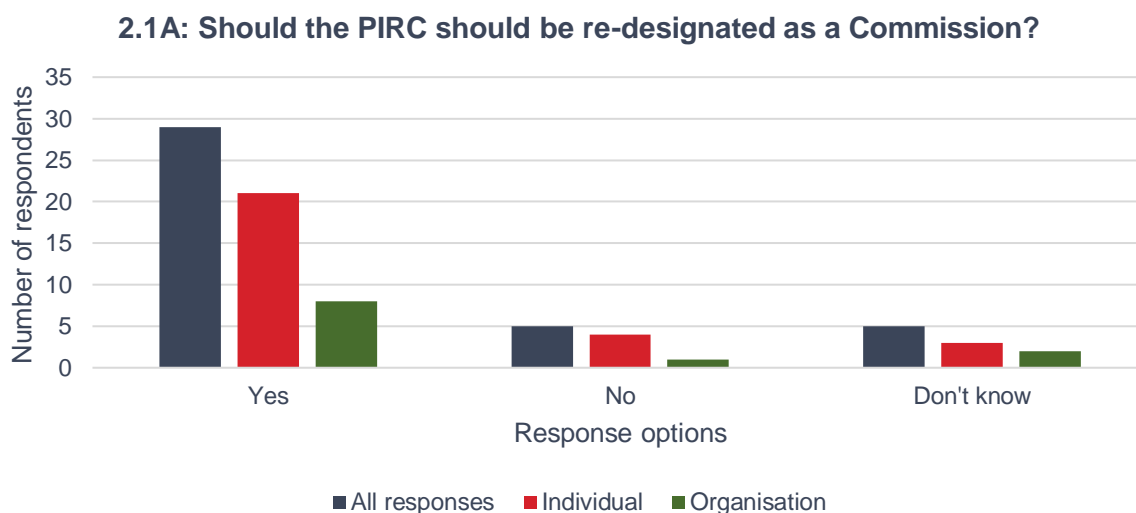
### 3.2 Governance, Jurisdiction and Powers

In summary, there was general agreement with recommendations regarding governance, jurisdiction and powers.

Most respondents agreed that the PIRC should be re-designated as a Commission and two Deputy Commissioners should be appointed. It was reasoned by some that this would increase the impartiality and transparency of the organisation.

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

Figure 5. Shows the number of respondents that selected each response option for question 2.1A categorised by respondent type.

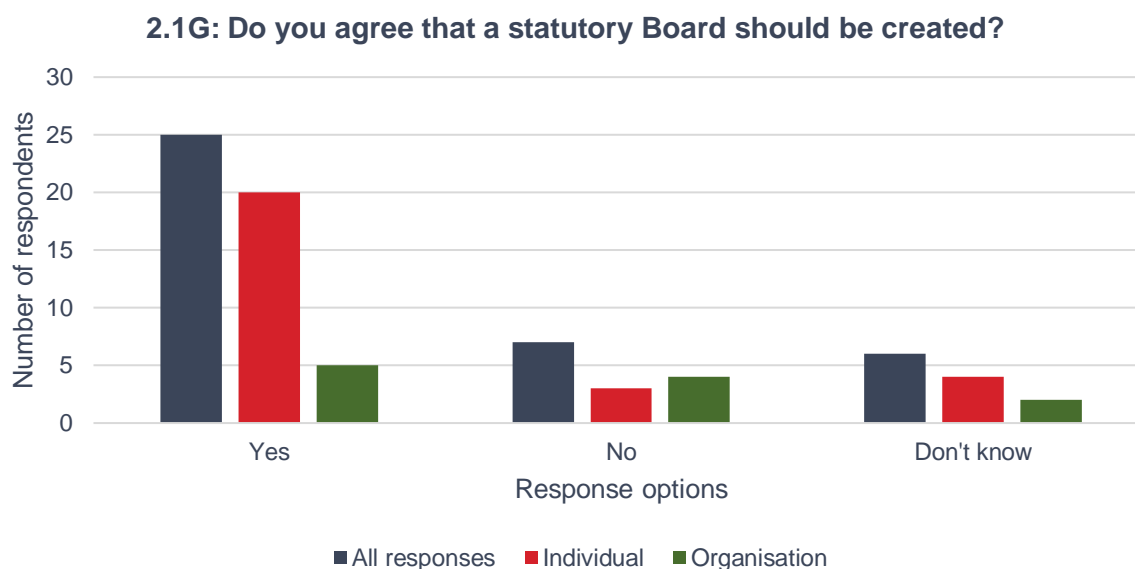


There was no clear consensus among respondents in relation to who should be responsible for appointing the Deputy Commissioners. While respondents were in favour of the Deputy Commissioners having legal knowledge, some suggested that former police officers and staff should be excluded in the interest of maintaining impartiality.

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

While the majority of respondents agreed that a statutory Board should be created, opinion was split among responses on behalf of organisations.

Figure 6. Shows the number of respondents that selected each response option for question 2.1G categorised by respondent type.



In relation to how the appointment of the PIRC should be made, the most favoured option by respondents was that it should be made on nomination of the Scottish Parliament, while the rest of the respondents were split between suggesting that it should remain a Scottish Ministerial appointment and being unsure. The respondents that were in favour of Scottish Parliament nomination argued that this would ensure that the PIRC is impartial, and that the appointment process is fair and balanced.

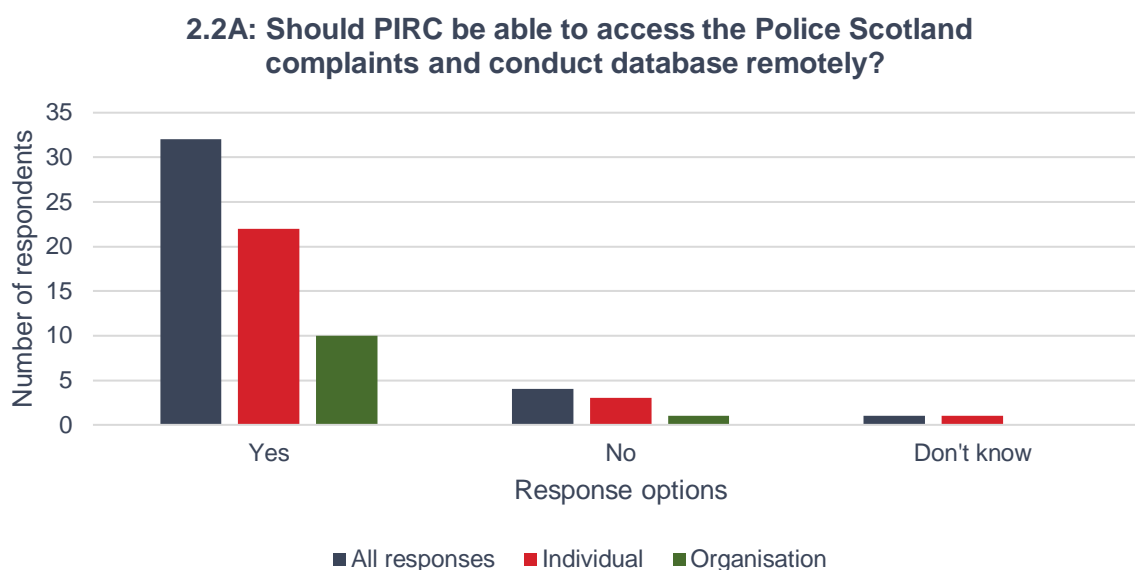
“All too often political influence can have a bearing on who controls the office. This is why nominations are the best and fairest method of electing the head of such and organisation like PIRCS”

Respondents were evenly split between agreeing and disagreeing that the PIRC should be made by Royal appointment. However, there was clearer consensus that the accountability arrangements for the PIRC should transfer to the Scottish Parliament with many respondents citing reasons of impartiality and transparency.

There was further general agreement that the PIRC should be able to access Police Scotland’s complaints and conduct database remotely with some respondents believing this would improve the efficiency and accuracy of investigations. However, several respondents argued that this access should be subject to appropriate safeguards and limits to ensure that any data protection concerns are addressed.

“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.”

Figure 7. Shows the number of respondents that selected each response option for question 2.2A categorised by respondent type.



There was also consensus among respondents that the PIRC should be given a statutory power to call in an investigation of a complaint and that this should be possible when (i) a complainer provides compelling evidence of a failure on the part of Police Scotland, (ii) there is sufficient evidence that Police Scotland has not dealt with a complaint properly and (iii) the Commissioner assesses that it would be in the public interest. 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.

In addition to complaints, respondents suggested that the PIRC should be able to investigate current practices and policies of Police Scotland when it would be in the public interest. While most respondent organisations agreed with this, a third of them disagreed. There was also a split in opinion in terms of whether this investigatory power should be limited in any way, with responses on behalf of individuals and organisations more likely to disagree and agree respectively.

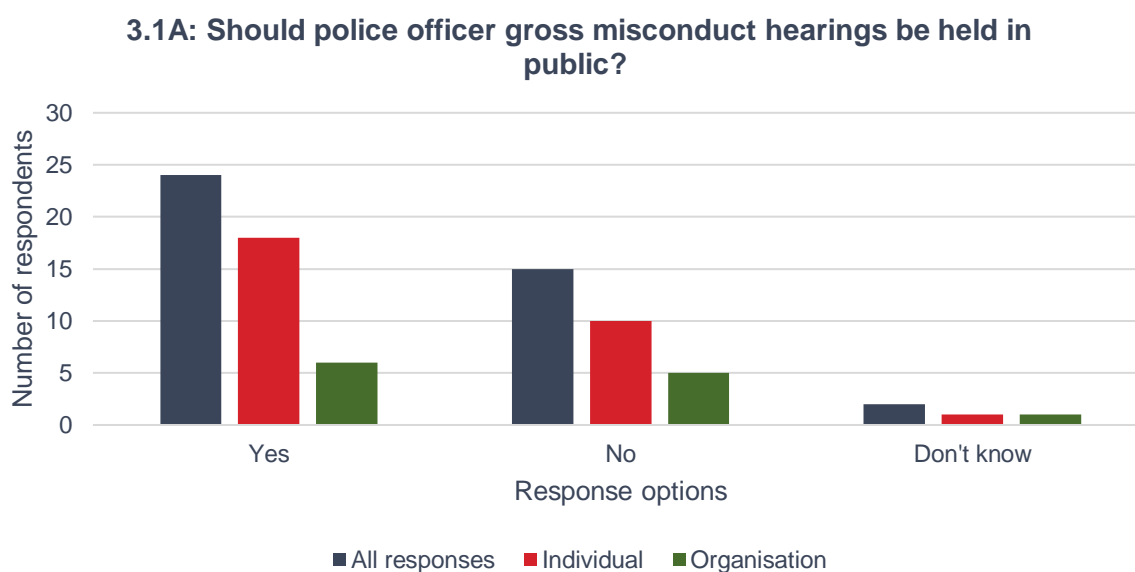
Furthermore, there was less clear agreement if recommendations from the PIRC should be put on a statutory footing similar to current reconsideration directions. However, most respondents suggested that this should be considered following either a review and an audit, or only a review. Most respondents agreed that 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, among the respondents that provided views in relation to cross-jurisdictional issues, most expressed that it is necessary to address the existing gap in cross-jurisdictional investigations and the PIRC should be able to investigate all officers involved in incidents that occur in Scotland.

### 3.3 Conduct and Standards

In summary, there was general agreement with recommendations regarding conduct and standards. Respondents were more likely to agree that gross misconduct hearings should be held in public and should be applicable to all ranks of officers to promote transparency and public confidence. This view tended to be favoured among individuals, however there was less consensus among respondent organisations.

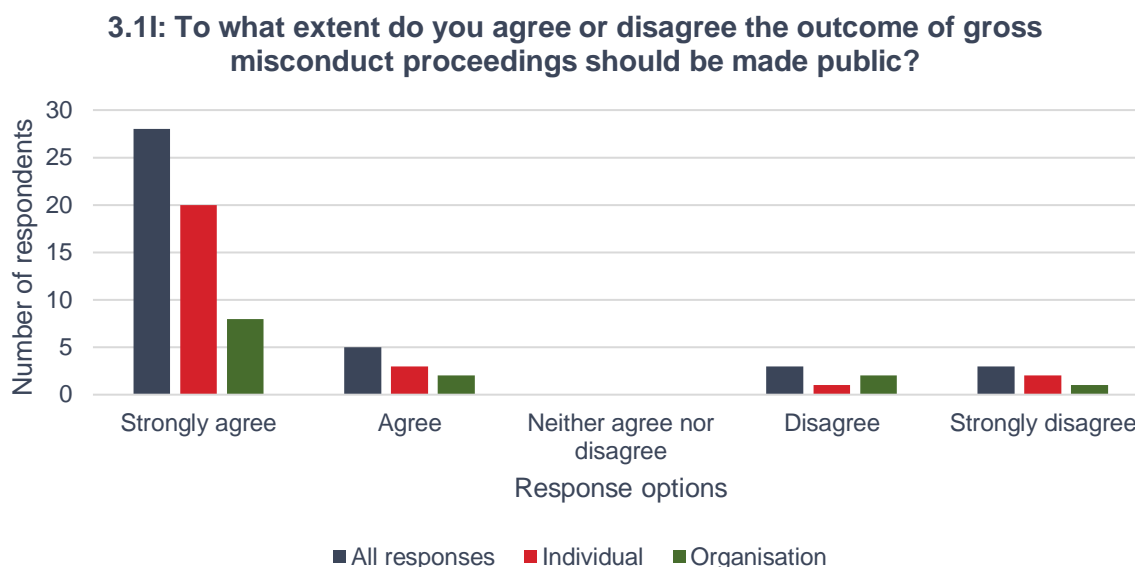
Figure 8. Shows the number of respondents that selected each response option for question 3.1A categorised by respondent type.



Approximately half of respondents suggested that the Chair of the hearing should have discretion in restricting attendance as they see appropriate, such as to protect vulnerable victims and to maintain a fair and unobstructed hearing process. Furthermore, there was consensus that evidence provided by vulnerable witnesses should be heard in private for their protection and that the Chair of gross misconduct proceedings should have to consider other reasonable adjustments to protect vulnerable individuals.

It was suggested that the outcomes of gross misconduct proceedings should be made public and published on the SPA website with Personal Identifiable Information of hearing participants redacted. However, respondents did not agree on the period of time that the outcomes should be published for, with many suggesting at least 28 days and others mentioning several years.

Figure 9. Shows the number of respondents that selected each response option for question 3.11 categorised by respondent type.



There was agreement among respondents that there should be an illustrative and publicly available list of matters likely to be considered by a gross misconduct hearing and the PIRC was most frequently suggested as the body that should be responsible for the publication of such a list.

Respondents also tended to favour that, except in exceptional circumstances, a finding of gross misconduct should always result in dismissal. However, organisational respondents were almost evenly split between agreeing and disagreeing that this should be the case.

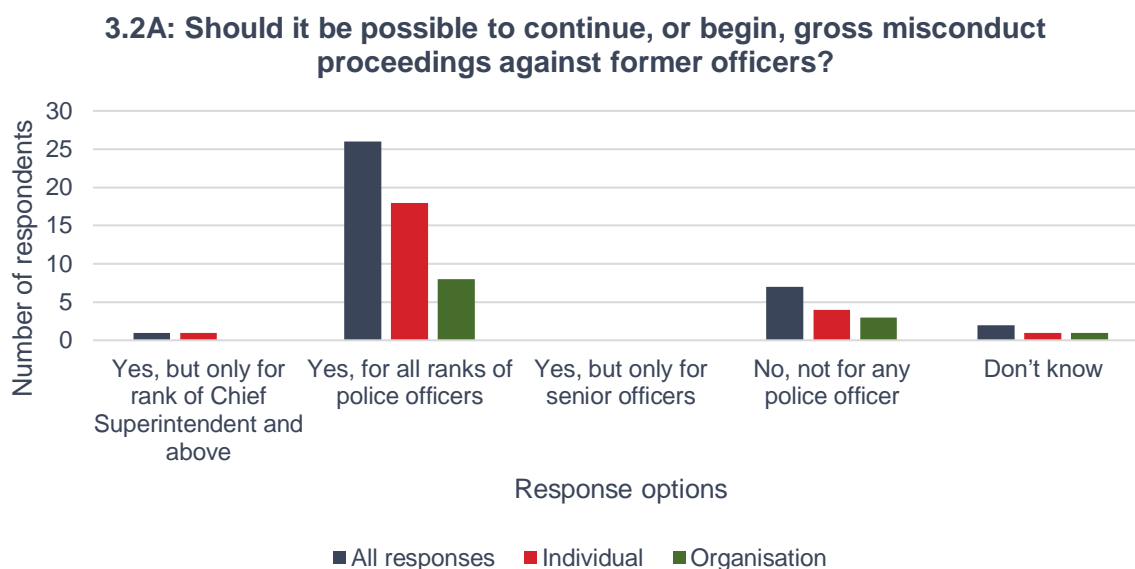
Respondents were generally in agreement in relation to the composition of gross misconduct hearing panels. Overall, respondents suggested that the Chair of these hearings should be an independent legally qualified person while the panel itself should include an independent lay person. Respondents typically 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 misconduct for all ranks of officer. It was also suggested that panel members should have a good understanding of legal processes and the nature of policing.

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

There was consensus among respondents that it should be possible to begin and continue gross misconduct proceedings against former officers of any rank after they have left the service. Some respondents suggested that this should only be possible in certain circumstances, such as when it is in the public interest and there is strong evidence. However, there was not a consensus regarding who should be responsible for making the decision to begin or continue such a proceeding. Respondents were split between suggesting that it should be the PIRC, the SPA or a different body (outside the options provided). Those in favour of the latter specified that the

responsible party should be independent and legally qualified.

Figure 10. Shows the number of respondents that selected each response option for question 3.2A categorised by respondent type.



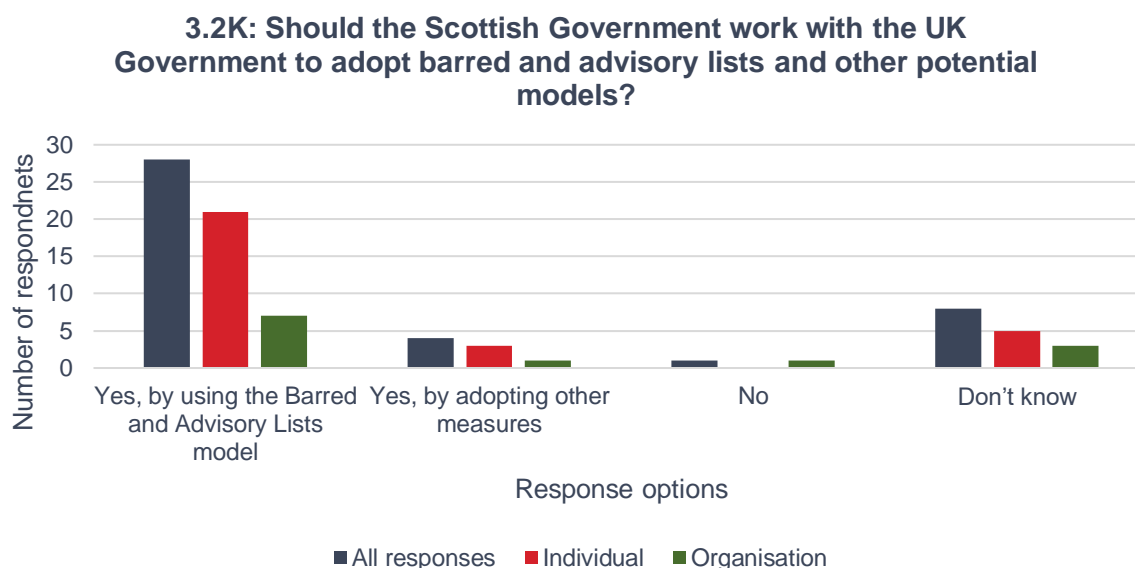
“Using a legally independent person proficient in law will ensure no favouritism towards the officer being investigated by other officers”

Respondents also agreed that continuing gross misconduct proceedings should be possible more than 12 months after a person has ceased to be an officer as long as the case is serious and exceptional, is likely to damage public confidence in policing, and the PIRC has determined that it is reasonable and proportionate. It was reasoned by some that officers should be held accountable for their actions regardless of timescale. Furthermore, there was consensus that this approach should be applicable to all ranks of officer.

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

In relation to barred and advisory lists, the most favoured option by respondents was that the Scottish Government should work with the UK Government to adopt this model. Some respondents suggested that there should be a zero-tolerance policy for misdemeanours.

Figure 11. Shows the number of respondents that selected each response option for question 3.2K categorised by respondent type.



Given the transfer of the Police Appeals Tribunal to the Scottish Tribunals, respondents agreed that senior officer conduct regulations should be revised to ensure that there is only one route of appeal when there has been a finding of gross misconduct. However, respondents were split between suggesting that the same route of appeal to the Police Appeals Tribunal should be included in regulations for findings of misconduct against senior officers and that the appeals process should be managed by an independent legally chaired panel. However, respondents emphasised the importance of impartiality in any body managing the appeals process.

There was general agreement that accelerated gross misconduct hearings should be able to take place when the evidence is considered incontrovertible and/or the subject officer admits to their behaviour being gross misconduct. However, respondents did not agree upon which body should be responsible for deciding what evidence is considered incontrovertible and if expedited proceedings are appropriate in each circumstance. The most frequently suggested bodies for providing this decision were an independent legally qualified body and the PIRC for cases involving both senior and non-senior officers. Examples of incontrovertible evidence provided by respondents included CCTV, witness statements and audio recordings.

There was agreement among respondents that the PIRC should take on responsibility for key aspects of misconduct and gross misconduct proceedings for senior officers, such as the preliminary assessment of misconduct allegations against senior police officers. When deciding to undertake an investigation into an allegation against a senior officer, there was little consensus for whether the responsible body should take into consideration if an allegation is made anonymously and is sufficiently specific in time and location or is malicious and vexatious.

There was consensus among respondents that the PIRC should be able to present a case at a senior officer gross misconduct hearing and 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 other matters that can be resolved ahead of a formal hearing. Some respondents expressed the view that the PIRC should be granted more power and authority over gross misconduct investigations.

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

There was agreement among respondents that the PIRC should have the ability to recommend the suspension of senior officers and that they should be required to provide supporting reasons to the SPA when doing so. There was some consensus in relation to whether the PIRC should only recommend suspension in circumstances when not suspending the officer may prejudice an effective misconduct investigation.

To deal with vexatious complainers, respondents agreed that the Scottish Government should consider amending current legislation. It was argued by some that an independent body should be granted the responsibility to determine whether a complaint is vexatious and that suitable processes need to be in place.

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

Respondents generally 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’s latest code of practice on disciplinary and grievance procedures.

In relation to joint misconduct proceedings, there was consensus among respondents that it should be possible to hold such proceedings to deal with any number or rank of officers with respondents emphasising that each officer should be entitled to separate legal advice and representation. However, there was no consensus in relation to who should make the decision whether to hold a joint proceeding. Respondents stated that their opinions on gross misconduct hearings would not change if hearings for senior officers were chaired by a legally qualified Chair or if hearings were held in public for senior officers only.

In relation to the conditions that must be met before an officer of any rank is suspended, respondents suggested that a temporary redeployment to alternative duties and a temporary alternative location to operate from must be considered. Furthermore, suspended officers should have the terms of their suspensions reviewed at least every 4 weeks.

Lastly, there was a consensus among respondents that the conduct regulations for special constables should be revised to bring them in line with those for regular police officers. It was reasoned 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.”



### **3.4 Liability for unlawful conduct**

In summary, there was agreement with the recommendation on liability for unlawful conduct.

There was consensus among respondents that the liability for unlawful conduct should be extended to cover the rank of Chief Constable. Respondents suggested that this would ensure that victims are protected and that officers of all ranks should be treated equally.

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



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