

From: [Redacted]
Sent: 26 March 2018 16:04
To: Cabinet Secretary for Justice; Lord Advocate
Cc: [Redacted]

Subject: Options paper for Police Complaints and Conduct Review - 26 March 2018

PS/Cabinet Secretary for Justice
PS/Lord Advocate

Copy as above

Options paper for Police Complaints and Conduct Review

Please see the attached **urgent** submission, sent on behalf of [Redacted]:



Private Office for
Justice - O...

[Redacted]

[Redacted]

Cabinet Secretary for Justice
Lord Advocate

POLICE COMPLAINTS AND CONDUCT REVIEW

Purpose

1. To invite you to consider options for the scope of a potential review into the current framework for police complaints and conduct.

Timing

2. **Urgent.** We understand you may wish to announce that there will be a review before recess. This will follow the announcement of new Members for the Scottish Police Authority (SPA) and the appointment of a new Chief Inspector of Her Majesty's Inspectorate of Constabulary in Scotland (HMICS).

Background

3. The framework around complaints handling and misconduct issues in relation to policing has seen a period of intense parliamentary, media and public scrutiny. Events surrounding the allegations of misconduct around the former Chief Constable and other senior officers have played out in a very public setting which has led to calls for a review to ensure that the system is fit-for-purpose. Of critical importance must be the proportionality and fairness of the system. As a first step, based on recent events and the Police, Investigations and Review Commissioner's (PIRC) audit of SPA complaints procedures published in December 2017, the SPA is conducting a speedy review of current process to secure swift improvements, ensuring the existing process operates as effectively as possible within its current parameters.

Key Issues

4. [redacted]

Objectives

5. From first principles, the key outcomes of a review would be:

- to ensure that both complainants and those who have been complained about are treated fairly;
- that the process is transparent and there is a clear accountability chain;
- that the process is proportionate to the complaints made;
- that roles and responsibilities at all levels are clear; and
- that there are clear and agreed processes and expectations around internal and external communication, balancing transparency with an appropriate level of confidentiality.

Form of Review

6. [redacted]

7. [redacted]

8. [redacted]

9. [redacted]

Independently led working group

10. [redacted]

[redacted]

Scottish Government led working group

11. [redacted]

SPA led working group

12. [redacted]

13. [redacted]

Timescale and phasing

14. [redacted]

Costs

15. [redacted]

Scope of the review

16. [redacted]

Stakeholder perspectives

17. [redacted]

18. [redacted]

Stakeholder engagement

19. Stakeholders it would be essential to involve in any review are:

- Scottish Police Authority
- Police Scotland
- Police Investigations and Review Commissioner
- HM Inspectorate of Constabulary in Scotland
- Crown Office and Procurator Fiscal Service
- Scottish Police Federation
- Association of Scottish Police Superintendents
- Scottish Chief Police Officers Staff Association

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- Scottish Police Consultative Forum
- Scottish Government

Conclusion

20. [redacted]

[redacted]

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
[redacted]			X		
			X		
			X		

[redacted]

COMPLAINTS AND CONDUCT REVIEW: THE LANDSCAPE

The complaints and conduct landscape has several constituent parts.

- The Police Complaints Commissioner Scotland (PCCS) was established by the Police, Public Order and Criminal Justice (Scotland) Act 2006 at which time there were 8 regional police forces in Scotland, as well as the SPSA and SCDEA. The PCCS would consider complaints, following the completion of a complaints handling process undertaken first within the relevant force and, if necessary, reviewed by a neighbouring force. In 2012, the PCCS was replaced by the PIRC under the Police & Fire Reform (Scotland) Act 2012 and given a wider remit, as there was no longer an option for different forces to review complaints. In so doing, the PIRC also took on the investigatory function. The 2006 Act confers certain duties on PIRC, including to maintain (and secure the maintenance by the SPA and Chief Constable of) suitable arrangements for complaints handling and reviewing complaints. The statutory guidance published by PCCS in March 2011 – and now owned by PIRC – fulfils this requirement.
- PIRC also has duties to investigate serious incidents involving the police referred by COPFS; serious incidents involving the police, at the request of the Chief Constable or the SPA; and relevant police matters which she considers would be in the public interest.
- The 2012 Act confers duties on Scottish Ministers to make regulations in relation to allegations of misconduct against senior officers and other constables, through the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013, and the Police Service of Scotland (Conduct) Regulations 2014 respectively. The 2012 Act confers functions on the PIRC, to investigate allegations of misconduct by senior police officers ranked Assistant Chief Constable (ACC) and above, if requested by the SPA. The 2013 regulations set out the requirements and circumstances for referral of allegations to PIRC for investigation and for PIRC to report the conclusions of any investigation to the SPA. The 2014 regulations allow for conduct proceedings to be carried out internally by Police Scotland.
- A complaint against a police officer may or may not result in action being taken in relation to misconduct.
- It should be noted that the SPA has recently re-introduced its Complaints and Conduct Committee. This committee may provide the required assurance on complaints and conduct that may have been lacking in the recent past.
- Given the SPA / Police Scotland process for handling complaints is the responsibility of PIRC, as set out in its founding legislation, only PIRC can make changes.
- If a complaint contains allegations of criminality, the SPA or Police Scotland must refer the case to COPFS. For senior officers COPFS will generally ask PIRC to investigate the senior officer, which allows the PIRC to investigate misconduct and criminal allegations at the same time, if the criminal allegations will not prejudice the misconduct case.
- For other ranks, Police Scotland will generally suspend misconduct investigations until any criminal procedures are complete. There will be very rare occasions when the misconduct allegations are totally separate from the criminal case, that they can be investigated at the same time by Police Scotland.

From: [Redacted]
Sent: 04 May 2018 12:37
To: [Redacted]

Subject: Complaints and Conduct review

Brief readout of meeting with Cab Sec / Lord Advocate / Solicitor General.

Reviewed context for review:

- recent high profile misconduct cases;
- [Redacted]
- confidentiality and respect that the system should demand can be compromised through use of media.

Scope

- Two stage review:
 - set of current issues where there could be speedy improvements
 - Five years on from establishment of single service, opportunity to review wider complaints / conduct / investigations framework, human rights considerations, length of time taken to complete investigations etc. Questions that need urgent resolution e.g. off-duty / retired officers, could be rolled in.
- Will need to define clearly what we want from this, and allow the lead and other senior stakeholders to review and contribute.
- Jointly sponsored by SG / Lord Advocate.

Leadership

- Prefer to have a single senior lead, legal background, for both stages who could commission work from others if need be, supported by a senior advisory group, following model of other recent judge-led reviews.
- Dame Elish Angiolini was discussed as a good potential option: background in public service, held senior role in Scotland, strong on ECHR, recent experience of similar reviews.
- Donna Bell to approach and set up discussion with Mr Matheson if she is interested and available.

Timing

- Jointly plan to announce by end May.

Donna – I'll find a slot for you, me, [Redacted] and [Redacted] to get together next week to work out what we can start doing now. [Redacted] has sourced a number for Elish Angiolini for you.

[Redacted]

Introductory phone call – Donna Bell and Dame Elish Angiolini – 10 May 2018

- Introductory discussion to explain that Ministers and the Lord Advocate were minded to commission a review of police complaints, conduct and investigations.
- Brief discussion of context and background.
- DB outlined that Ministers were looking for an independent chair to lead the review, one who understood the complex landscape around police scrutiny and complaints and would command the respect of stakeholders.
- In light of Dame Elish's role as former Lord Advocate and experience in leading independent reviews both for the Scottish Government and UK Government, DB asked if she would consider taking this forward for Ministers.
- Dame Elish agreed to consider this invitation, weighing up existing commitments.

From: Donna Bell
Sent: 11 May 2018 09:35
To: [Redacted]
Subject: Our discussion yesterday

Dear Elish, it was great to speak with you yesterday. I said I would follow up with contact details in case you have any further questions over the next few days. My phone numbers are below if you need to get in touch. I look forward to hearing from you next week, but in the meantime, I hope you have a good weekend.

Thanks

Donna

Donna Bell
Deputy Director
Police Division
Scottish Government
[redacted]

From: [Redacted]
Sent: 16 May 2018 17:40
To: Cabinet Secretary for Justice; Lord Advocate; Solicitor General
Cc: [Redacted]
Subject: RE: official sensitive - Complaints and Conduct Review

PS/Cabinet Secretary for Justice
PS/Lord Advocate
PS/Solicitor General

Police Complaints and Conduct Review

Further to [Redacted] note of 11 May, conversations are progressing with Dame Elish Angiolini on the Complaints and Conducts Review.

The form and timing of any announcement will be subject to the outcome of those discussions, but mindful that potential slots for a parliamentary statement before recess may be scarce, would it be possible to tentatively identify a slot at this stage?

We understand that a statement on the Miners' Strike Review was due to be made on 21 June but has now been brought forward to 7 June: that being the case, would there be scope to provisionally schedule a statement on the Complaints and Conduct Review for 21 June?

Best regards

[Redacted]

[Redacted]

[Redacted]

From: Donna Bell
Sent: 11 May 2018 09:28
To: Cabinet Secretary for Justice; Lord Advocate; Solicitor General
Cc: [Redacted]
Subject: official sensitive - Complaints and Conduct Review

Dear all

Just a short update on progress. I have now spoken with Elish Angiolini and she is very interested in taking forward the review. [Redacted]. I'll provide a further update then.

To be aware she may call the Lord Advocate informally to discuss, just so he is sighted on that.

Thanks

Donna

Phone call – Donna Bell and Dame Elish Angiolini – 16 May 2018

- Further discussion on whether Dame Elish might consider leading the independent review of police complaints handling, conduct and investigations.
- Dame Elish wished to have some further information on the scope and remit of the review before making a decision.
- DB briefly outlined the context and drivers for the review and undertook to provide a short note providing more detail.

POLICE COMPLAINTS AND CONDUCT REVIEW

Background

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Key Issues

[redacted]

Objectives

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Timescale and phasing

[Redacted]

Scope of the review

[redacted]

Stakeholder perspectives

[Redacted]

Stakeholder engagement

Stakeholders it would be essential to involve in any review are:

- Scottish Police Authority
- Police Scotland

- Police Investigations and Review Commissioner
- HM Inspectorate of Constabulary in Scotland
- Crown Office and Procurator Fiscal Service
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- Scottish Police Consultative Forum
- Scottish Government

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criminal allegations at the same time, if the criminal allegations will not prejudice the misconduct case.

- For other ranks, Police Scotland will generally suspend misconduct investigations until any criminal procedures are complete. There will be very rare occasions when the misconduct allegations are totally separate from the criminal case, that they can be investigated at the same time by Police Scotland.

Phone call – Donna Bell and Dame Elish Angiolini – 24 May 2018

- Further discussion of review remit and duration (potentially 18 months to 2 years), as well as potential phasing of the review.
- Next steps would be to organise a call or meeting with the Cabinet Secretary and confirm arrangements for supporting the Review.
- A team would be identified and office space within the Scottish Government estate.
- Ministers were supportive of this on the basis that her leadership, experience, expertise and standing would bring greater credibility, independence and authority to a sensitive and complex review.
- DB outlined that the review would be announced in a statement to Parliament later in June and, due to parliamentary protocol, it was essential that details of the review were not disclosed publicly before the statement.
- Dame Elish confirmed that she would advise her governing body in strictest confidence, but had received full support and had been encouraged to undertake such roles in the past.

From: Donna Bell
Sent: 30 May 2018 13:28
To: [Redacted]; [Redacted]

Subject: Contacts

Dear Elish, good to speak with you again yesterday. My colleague [Redacted] will be in touch shortly to forward on the draft terms of reference. She will also be taking forward the arrangements for fees and indemnity, so will be in touch separately on those.

[Redacted]

Regards

Donna

Donna Bell
Deputy Director
Police Division
Scottish Government
[redacted]

Phone Call between Cabinet Secretary for Justice, Michael Matheson MSP and Dame Elish Angiolini – 13 June 2018

Purpose:

- Brief introductory discussion on the Review of Complaints Handling, Investigations and Misconduct in Relation to Policing

Key Points:

- Mr Matheson welcomed Dame Elish's leadership of the review, emphasising the need to re-establish trust in the system, given her experience as a former Lord Advocate and PF as well as her track record of leading independent reviews.
- Would be useful for the Review to assess the extent to which existing arrangements provide the optimal model.
- Strong appetite for the review among stakeholders in Scotland who will welcome its launch.
- The Review will not look at individual cases or re-assess decisions but may consider how processes and procedures have worked in particular instances, anonymising them where appropriate.
- Questions of confidentiality would be looked at in light of recent misconduct cases, both for the complainant and the subject of the complaint.
- The Review would be split into two phases, the first looking at intermediate propositions, the second focusing on a more wide-ranging inquiry.
- A joint statement on behalf of the Cabinet Secretary and Lord Advocate, would be prepared for Mr Matheson to deliver to Parliament.
- The Review would formally begin in the Autumn with some preparatory work taking place over the summer.
- Stakeholder engagement would be an early priority with focus groups and interviews, as well as meetings with key representatives.
- Whilst the Review was underway, the Justice committee would be conducting its post-legislative review of the 2012 Act but have a much wider focus, looking across police and fire reform.
- Dame Elish would plan to have early meetings with conveners of the Justice Committee and Sub-Committee.
- The independence of the Review would be paramount, although any urgent emerging issues, such as allegations of criminality, would be passed on to the appropriate agency immediately.

From: [REDACTED] of Cabinet Secretary for Justice
Sent: 19 June 2018 12:00
To: [REDACTED] Cabinet Secretary for Justice
Cc: Lord Advocate; [REDACTED] Russell GE (Gillian); [REDACTED] Bell D (Donna); [REDACTED]
Subject: [REDACTED] Review of Complaints Handling Investigations and Misconduct Issues in Relation to Policing - letter of engagement - 18 June 2018

Sensitivity: Private



u418092_19-06-...

Thanks [REDACTED]

Mr Matheson has signed this letter of engagement – signed copy attached for records.

I'll put a hard copy in the post just now but do you have a contact email address we can send it to and grateful for confirmation of what time you'd like us to send it.

Thanks,
[REDACTED]

[REDACTED]
Office of Michael Matheson, Cabinet Secretary for Justice
[REDACTED]

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From: [REDACTED]
Sent: 18 June 2018 15:44
To: Cabinet Secretary for Justice
Cc: Lord Advocate; [REDACTED] Russell GE (Gillian); [REDACTED] Bell D (Donna); [REDACTED]
Subject: [REDACTED] - Review of Complaints Handling Investigations and Misconduct Issues in Relation to Policing - letter of engagement - 18 June 2018
Importance: High
Sensitivity: Private

PS/Cabinet Secretary for Justice

OFFICIAL - SENSITIVE: PERSONAL - REVIEW OF COMPLAINTS HANDLING INVESTIGATIONS AND MISCONDUCT ISSUES IN RELATION TO POLICING - LETTER OF ENGAGEMENT

Please see the attached draft letter for engagement for Mr Matheson to consider sending to Dame Elish Angiolini with the terms attached to her position as Chair of the Review. Please note that this letter contains sensitive personal information and should not be distributed any further:

<< File: Review of Complaints Handling Investigations and Misconduct Issues in Relation to Policing - letter of engagement - 15 June 2018.docx >>

This draft has been developed in discussion with [REDACTED] and reviewed by Dame Elish.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

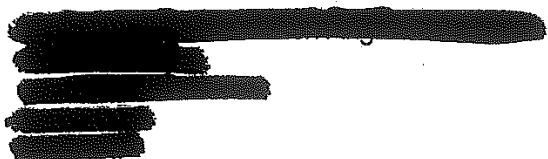
[REDACTED]

Cabinet Secretary for Justice
Michael Matheson MSP



Scottish Government
Riaghaltas na h-Alba
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E: scottish.ministers@gov.scot



19th June 2018

Dear Elish,

Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing

Thank you for agreeing to lead an independent review of the framework and processes for complaints handling, investigations and misconduct issues in relation to policing. The Lord Advocate and I believe a review led by you will ensure all partners and stakeholders can have confidence that it will be thorough and independent. I am now writing to confirm the terms and arrangements for the Review.

Terms of Reference

The Terms of Reference for the Review are appended at Annex A to this letter.

In the course of its work, the Review may consider and provide advice or recommendations to both the Lord Advocate and me on:

- **working protocols**, standard operating procedures and Memoranda of Understanding;
- **guidance material**, both statutory and non-statutory;
- **secondary legislation**, including the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013, the Police Service of Scotland (Conduct) Regulations 2014, the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013; and
- **primary legislation** including the Police and Fire Reform (Scotland) Act 2012 and the Police, Public Order and Criminal Justice (Scotland) Act 2006.

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The Review should take full account of the Police Investigations and Review Commissioner's (PIRC) audit of SPA complaints procedures published in December 2017 and the work of the SPA's Complaints Handling Working Group in 2018.

Key outcomes of the Review should be to identify improvements to ensure:

- that both complainants and those who have been complained about are treated fairly;
- that complaints handling and investigation processes are transparent and there is a clear accountability chain;
- that processes are proportionate to the complaints made or the incidents under investigation;
- that roles and responsibilities at all levels are clear, effective and appropriate; and
- that there are clear and agreed protocols around internal and external communication, balancing transparency with an appropriate level of confidentiality.

Key stakeholders to be involved in the Review include:

- Association of Scottish Police Superintendents
- Crown Office and Procurator Fiscal Service
- HM Inspectorate of Constabulary in Scotland
- Police Investigations and Review Commissioner
- Police Scotland
- Scottish Chief Police Officers Staff Association
- Scottish Government
- Scottish Police Authority
- Scottish Police Consultative Forum
- Scottish Police Federation

Fees and expenses

We have agreed that you will receive an annual honorarium for leading this Review of £150,000. That fee will be paid to you, on receipt of an invoice from you, pro-rata on a quarterly basis. My officials will provide further information in relation to payment mechanisms and tax arrangements.

All necessary travel and accommodation expenses will be met by the Scottish Government. Travel and accommodation should, wherever possible, be planned in advance so that bookings can be made by the Scottish Government travel booking service. This will minimise paperwork for you in relation to claiming back expenses.

All reasonable out-of-pocket incidental expenses will also be reimbursed when invoiced by you and with copies of receipts provided. The secretariat appointed to the Review will manage all the necessary travel and accommodation bookings, in liaison with your Executive Assistant and will process invoices.

Indemnity

[REDACTED] I can confirm that the Scottish

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Government will indemnify you against any legal costs, actions or damages arising from any reports published by or in connection with the Review.

Commissioning from other parties

During the Review you may feel that expert reports or audits are required to support the work. The Scottish Government will meet the reasonable costs of any such work undertaken by other parties. The services needed should be discussed in the first instance with Donna Bell as the Review's sponsor in Police Division. The Scottish Government has access to a range of specialisms and skills and has established contracts in place for various consultancy services. Meeting the needs of the investigation through these established routes would be the preferred approach, if possible. If that is not possible, or if there are particular skills or experience required, these can be commissioned separately as needed.

It is understood that you may also wish to commission other lawyers to assist with interviews. The costs for these additional interviewers should be agreed with Donna before commencing such arrangements. Arrangements for paying these additional interviewers will be managed by the secretariat supporting the Review.

Support and Equipment

[REDACTED] will be appointed on a full-time basis to lead the secretariat to the Review.

Additional staff will be appointed to support the Review. If at any time during the Investigation you feel that further support is required we will make this available.

[REDACTED]

A private office has been equipped for your team [REDACTED]. Mobile phones and laptops will be supplied to all team members.

Data storage, encryption and transfer

All personal and private information received by the Review will be stored electronically on the Scottish Government's electronic filing system. All members of the Review will have access to this filing system and will be expected to adhere to Scottish Government information management principles.

All records and personal data handled by you and your team as part of the investigation should be handled in accordance with the Scottish Government Information Security Policy, the Data Protection Act 1998 and any statutory successor, and the General Data Protection Regulation (GDPR).

The Review is independent of Government. This means that:

- The conduct of the Review, the content of the report and any conclusions and recommendations are matters for you and the Review Secretariat to determine without intervention by Scottish Ministers.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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- All files, records and information received by you and the Secretariat will be held in a secure area for and on behalf of you both during the Review and after it has concluded, and not for the Scottish Government or any other public authority.
- It will be for you and the Review Secretariat to determine what information should be proactively published, and how to respond to requests for files, records or other information.
- The Review is not a public authority for the purposes of the Freedom of Information (Scotland) Act 2002. As stated above it will not hold information on behalf of any public authority.

Reports

At the conclusion of the Review you will provide a report of your findings with recommendations to me and the Lord Advocate.

Monitoring progress

You should keep Donna Bell, as the Review sponsor, updated on progress with the Review. If at any point there are significant developments that you feel she should be aware of, you can speak to her directly.

Timescale

The Review will be announced on 19 June 2018. It is understood that it is not feasible at this point to set an end date for the Review but I would expect it to take between 18 months to 2 years. The Scottish Government will support the Review until it completes its work.

Best wishes



MICHAEL MATHESON

REVIEW OF COMPLAINTS HANDLING, INVESTIGATIONS AND MISCONDUCT ISSUES IN RELATION TO POLICING

Terms of Reference

The purpose of the Review is to:

- consider the current law and practice in relation to complaints handling, investigations and misconduct issues, as set out in relevant primary and secondary legislation;
- assess and report on the effectiveness of the current law and practice; and
- make recommendations to the Cabinet Secretary for Justice and the Lord Advocate for improvements to ensure the system is fair, transparent, accountable and proportionate, in order to strengthen public confidence in policing in Scotland.

Whilst the Review will encompass the investigation of criminal allegations against the police, it will not address the separate role of the Lord Advocate in investigating criminal complaints against the police or the role of HMICS in scrutinising the state, effectiveness and efficiency of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA). The consideration of specific complaints and investigations will not form part of the review beyond informing an overall assessment of the efficacy of current systems and processes.

The Review will consist of two phases:

- The **first phase** will include a consideration of current procedures and guidance to identify areas for immediate improvement;
- The **second phase** will include a wider assessment of the frameworks and practice in relation to complaints handling, investigations and misconduct issues, covering the Police and Investigations Review Commissioner, the SPA and Police Scotland. Recommendations in the final report should take into account human rights considerations, as well as seeking to identify longer term improvements.

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