



Home Office

Consultation on changes to the Police Disciplinary System:

Holding disciplinary and appeal hearings in public, introducing legally-qualified chairs in disciplinary hearings, protecting whistleblowers and changes to chief officer compensation payments.

November 2014

Changes to the Police Disciplinary System

Introduction

In her 22 July Parliamentary statement on police reform, the Home Secretary announced a full independent review of the police disciplinary system, chaired by Major General (Retd) Chip Chapman CB, and an end to end review of the police complaints system including the Independent Police Complaints Commission (IPCC). These reviews have now concluded. A separate consultation will seek views on recommendations from those reviews that would require primary legislation and that, subject to the consultation, the Government intends to implement in the next Parliament. The Home Secretary also announced on 22 July a number of measures that will inject greater transparency, justice and independence into the police disciplinary system in the shorter term and improve the current whistleblowing arrangements. This consultation seeks views on these proposals which, subject to the responses received the Government plans to implement by March 2015. The proposals that form part of this consultation are as follows.

Holding disciplinary and appeal hearings in public

To improve transparency and justice, police disciplinary and appeal hearings will be held in public.

Introducing legally-qualified chairs to run disciplinary hearing panels

To introduce a greater degree of independence into the way police disciplinary hearings are conducted and to ensure judgements are legally sound, legally-qualified chairs will be introduced to conduct police disciplinary hearings.

Protecting police whistleblowers

To strengthen protections for police whistleblowers, whistleblowers will not be subject to disciplinary action for taking the necessary steps to report a concern and any reprisals against them will be taken seriously.

Changes to chief officer compensation payments in disciplinary cases

To improve justice, the disciplinary hearing panels for senior officers will be given the ability to remove or adjust compensation payments due at the termination of a chief officer's contract of appointment, if they are subject to a disciplinary finding.

Holding Police Disciplinary and Appeal Hearings in Public and Introducing Legally-Qualified Chairs to Conduct Hearings

Background

Disciplinary matters involving police officers and special constables are dealt with by a system set out in regulations made by the Home Secretary. This is in contrast to police staff and other public sector employees who are dealt with under employment law. The current police disciplinary arrangements are set out in the Police (Conduct) Regulations 2012. Appeals against the outcome or finding of a police disciplinary process may be made to a Police Appeals Tribunal, which is a Non-Departmental Public Body. Arrangements for Police Appeals Tribunals are set out in the Police Appeals Tribunal Rules 2012.

The conduct regulations set out the standards of professional behaviour that police officers must uphold. Where an officer may have breached one or more of the standards of professional behaviour this is assessed as to whether it is something that, if proven, would lead to dismissal. Breaches of the standards of professional behaviour that would lead to dismissal are assessed as gross misconduct and lower level breaches are assessed as misconduct. This assessment can be changed if necessary once the allegation is investigated further.

A disciplinary hearing is convened to hear cases where, following an investigation, a police officer or special constable has a case to answer for gross misconduct, or where the officer concerned already has a final written warning in place from previous disciplinary proceedings and has a case to answer for a further instance of misconduct. Cases where a police officer is found to have a case to answer for misconduct, provided the officer is not subject to a final written warning, are dealt with at lower level misconduct meetings.

The police conduct regulations currently require both misconduct meetings and misconduct hearings to be held in private. The only exception to this rule is where a fully independent investigation is undertaken by the IPCC, and the IPCC considers that because of the gravity of the case, or other exceptional circumstances, it would be in the public interest for the hearing to be held in public. In such a case, the IPCC may direct that the hearing be held in public after consultation with the chief officer of the force, the officer subject to the hearing, any complainant or interested person¹, and any witnesses.

The composition of panels that hear misconduct hearings for non-senior officers (PCs to Chief Superintendents) is as follows:

Panel Member	Chair	Panel Member
Police officer of superintendent rank or above	Senior Officer	Independent Member

A human resources professional of equivalent rank may replace either the chair or the other police panel member but not both.

Senior officer panels are made up of a legally-qualified chair, Her Majesty's Chief Inspector of Constabulary (HMCIC) or a HM Inspector (HMI) of Constabulary nominated by HMCIC, and an independent member.

¹ "Interested person" is defined by S.21 of the Police Reform Act 2002

Where there is sufficient evidence to establish, without the need for further evidence, that the conduct of a police officer constitutes gross misconduct and it would be in the public interest for that officer to cease to be a police officer without delay, a case may be referred to a special case hearing.

A special case hearing is a fast track hearing held in front of the chief officer of a force, or an Assistant Commissioner in the case of the Metropolitan Police, rather than a three person panel. Special case hearings are currently held in private.

Appeals for non-senior officers are held in front of a three person panel comprising a legally-qualified chair, a serving senior officer, and a retired police officer who was a member of an appropriate staff association. For senior officers the panel consists of a legally qualified chair, HMCIC or an HMI nominated by HMCIC and the Permanent Secretary of the Home Office or a Home Office Director nominated by the Permanent Secretary. The Police Appeals Tribunal Rules currently require any appeal hearing conducted by a Police Appeals Tribunal to be held in private.

Proposal

The intention is that misconduct hearings for higher level cases that could lead to dismissal will be public by default. This includes both misconduct hearings and special case hearings but does not include lower level misconduct meetings, which the Government does not intend to make public. Appeals hearings held by Police Appeals Tribunals will also be made public by default. Legally-qualified chairs will replace the senior officer who currently chairs the panel of a disciplinary hearing, and the chief officer in a special case hearing. There will be no change to the composition of panels for senior officers, or for misconduct meetings or appeal hearings.

In general, misconduct hearings in the police are run well and to a high standard by police forces within the existing framework. However, there are a number of reasons for proposing that misconduct hearings, special case hearings and appeal hearings should be held in public by default. Such a change should:

- Ensure that the robust response to misconduct that police forces take is visible;
- Promote greater consistency in decision making by panels;
- Ensure that the panels for such hearings discharge their duties with the greatest possible degree of professionalism and put this professionalism on show;
- Ensure hearings proceed, and decisions get made, in an expeditious manner; in future where the panel is dilatory this would be exposed to the public and in the media; and
- Encourage only legitimate legal arguments to be made in defence of officers.

Q1: Do you agree that misconduct hearings, special case hearings and Police Appeals Tribunals should be held in public by default?

Q2: What benefits or costs do you think holding hearings in public will entail?

There are also a number of reasons for proposing that legally-qualified chairs replace senior officers on the panels for both disciplinary hearings and special case hearings. Such a change should ensure:

- A greater degree of independence in the decision making of panels, ensuring fairness for officers, police forces and any victims or complainants;
- That the legal process at a disciplinary hearing is followed properly;
- That process points raised by parties to the hearing are dealt with expeditiously and robustly; and

- That the written judgements of the panel are legally sound and reduce the likelihood of a successful appeal on grounds of process.

Q3: Do you agree that legally-qualified chairs should be introduced to chair the panel in disciplinary and special case hearings?

Q4: What benefits or costs do you think the introduction of legally-qualified chairs will entail?

Circumstances in which the public should be excluded from a police disciplinary or appeal hearing

There will be certain situations where it will be necessary and appropriate for all, or parts of, a police disciplinary or appeal hearing to be held in private. The senior officer or legally-qualified person chairing the panel will have to make decisions about when it will be appropriate to exclude the public and to hold either all or part of a hearing in private.

In assessing whether the public should be excluded from a hearing or any part of a hearing there are a number of things that may need to be taken into account, including:

- a) The transparency of the police misconduct and/or complaints system;
- b) The wider public interest in the proceedings;
- c) The vulnerability, physical and mental health and/or the welfare of any witnesses who may be called to give evidence at the hearing;
- d) Where a misconduct hearing is being held as a direct result of a public complaint; the vulnerability, physical and mental health and/or the welfare of the complainant(s);
- e) The physical and mental health and/or welfare of the officer(s) subject to the misconduct hearing;
- f) The welfare of any third party not listed above, i.e. where a hearing could disclose personal information relating to a third party;
- g) Any factors relating to sensitive police operations that may not be appropriate for public disclosure, including where there would be a risk of the identification of covert human intelligence sources, confidential informants or covert police assets;
- h) Whether holding a hearing in public would jeopardise or interfere with any criminal proceedings;
- i) Whether holding the hearing would interfere with the prevention or detection of crime or the apprehension of offenders; and
- j) Any relevant national security issues.

These factors will also need to be taken into account when deciding whether an officer should be named prior to a hearing when the details of the hearing are published.

Q5: Are there any other factors that would need to be considered by the panel when a decision is being made as to whether all or part of a hearing should be held in private?

Arrangements for the attendance of the public at police disciplinary or appeal hearings

The IPCC is a participant at certain misconduct hearings and complainants and interested persons are granted certain rights in relation to their attendance at such hearings. The proposal to hold hearings in public would leave all of the current rights granted to complainants and interested persons intact.

The police force will be responsible for publishing, with sufficient notice, the date, time, and place of the hearing in an easily accessible location, together with instructions on how members of the public can attend a hearing and an explanation of any necessary and proportionate rules governing public attendance as specified by the police force. As attendance at police misconduct hearings may involve members of the public being granted access to police premises, it may be appropriate for forces to require attendees to produce valid identification documents.

It is possible that public access to hearings could also be granted by the use of a live stream to a more accessible location or to the web. Members of the public wishing to attend a hearing will be required to do so at their own expense, except where they are attending as a witness. The police force will be expected to meet the reasonable expenses of any witnesses in the same way as they do now.

It is likely that the taking of photographs during the hearing will be prohibited. The use of sound recording equipment during the hearing will also be prohibited unless expressly agreed by the Chair. The use of live, text-based communications for the purposes of simultaneous reporting of proceedings with the outside world may be permitted if the Chair is satisfied that it does not interfere with the orderly conduct of proceedings.

Q6: How could the police best engage the public and inform them about police disciplinary and appeal hearings, outcomes and processes?

Q7: Are there any issues or practical factors the Government needs to consider regarding the accessibility of hearings to members of the public?

Protecting police whistleblowers

Background

Whistleblowing occurs when police officers or staff raise a concern about wrongdoing or poor practice in their force, whether with a line manager, the force Professional Standards Department, the IPCC, or occasionally, when necessary, elsewhere. Whistleblowing is not just about addressing misconduct. Individuals may come forward with concerns about wider poor practice, allowing the force to pick up potential problems early and to learn and improve as an organisation.

The standards of professional behaviour set out in the Police (Conduct) Regulation 2012 and the Code of Ethics, launched by the College of Policing in July 2014, include a positive obligation for police officers and staff to challenge or report the conduct of colleagues that falls below the expected standards. Officers can be subject to disciplinary action if they fail to comply with this standard – in one force the Deputy Chief Constable was disciplined for failing to challenge the behaviour of the Chief Constable.

If an officer wants to report misconduct or a criminal offence by a fellow officer, they can do so via the management chain or directly to their force Professional Standards Department. Sometimes officers will report concerns to the Police and Crime Commissioner for their force, to CrimeStoppers or to an independent 'integrity line' paid for by their force. The majority of Professional Standards Departments provide an anonymous online reporting system to allow officers to report without revealing their identity. Police officers and staff can also report concerns directly to the IPCC in any circumstances. They are not required to go through a line manager or force Professional Standards Departments in order to do so. The fact that officers cannot lodge a public 'complaint' as defined under the Police Reform Act 2002 does not affect their ability to report a conduct matter to the IPCC, or the ability of the IPCC to investigate it.

Many police officers and staff are already prepared to take a stand and become whistleblowers, and Professional Standards Departments receive a significant number of reports from concerned officers and staff. The vast majority of serious disciplinary proceedings against officers arise from internal reports and investigations without a public complaint being made.

However there are times when officers choose not to come forward. This may be due to the quality and clarity of the reporting options available, lack of confidence that anything will be done, misplaced loyalty to colleagues and the culture of the organisation.

This consultation focuses on how the reaction of the organisation, and its employees, to whistleblowers can deter officers from coming forward. The House of Commons Committee of Public Accounts reported on whistleblowing in July 2014 and identified protecting whistleblowers from victimisation as a key factor in encouraging more individuals to come forward. The Department of Business, Innovation and Skills (BIS) recently reviewed the provisions in the Employment Rights Act 1996 about public interest disclosures, which allows whistleblowers, including police whistleblowers, to claim uncapped compensation at an employment tribunal if they suffer detriment by their employer or colleagues as a result of whistleblowing.

Officers may believe that they will end up being dismissed or disciplined themselves as a result of reporting a concern. Media coverage focuses on the small number of police whistleblowers who believe they have been unfairly treated. Investigations may turn to the motives and behaviour of the whistleblower, rather than focusing on the concern they have raised. When

cases end up being reported in the media, the force may defend its own position, potentially at the whistleblower's expense.

Some officers, both junior and senior, may choose not to come forward because they fear damaging their future career. Even at the most junior levels, officers may be fearful of securing promotion or appointment to a specialist function if they have reported a senior colleague. For senior officers, career damage can be even more of an issue due to the small size of the top team, the reliance on that team for future career opportunities, the restricted number of vacancies and the subjectivity of measuring performance.

Officers may also fear victimisation at the hands of colleagues. This can take the form of bullying or more subtle forms of discrimination, such as being made to feel unwelcome. It might also take the form of retaliation from the person they have reported or from others, such as malicious or tactical counter-allegations, aimed at reducing the credibility of the original whistleblower or deterring them from pursuing their allegation.

The Home Secretary has already announced the creation of a new national policy for police forces on whistleblowing, to be produced by the College of Policing by March 2015. The policy will provide further clarity for the police on protected disclosures, as well as setting out best practice on reporting systems, support and protection for whistleblowers.

Proposal

The Government wants to strengthen protection from disciplinary action and reprisals for police whistleblowers that do come forward. It is essential that officers and staff have confidence that reporting wrongdoing will be a positive experience and not result in detrimental treatment by their force or colleagues.

Police officers and staff are protected from unfair treatment by their employer and colleagues under the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998) but this only provides a remedy through the courts when the whistleblower feels they have little choice other than to leave their job. The Government wants to act to protect officers at an earlier stage.

The Code of Ethics has already set clear expectations about the way police forces should respond to whistleblowers. They should be supported if they raise any valid concern, should not be subject to disciplinary proceedings, and discrimination against a whistleblower should not be tolerated. The proposals in this consultation will strengthen this by enshrining the behaviours in the Code, and the protections of the Employment Rights Act 1996, in the police conduct regulations. This will mean that whistleblowers are protected from disciplinary action relating to their actions in blowing the whistle, and from malign treatment or vexatious allegations which may arise at a later date. This will send a clear message to officers that if they come forward, they should be protected.

To achieve this, the Government will amend the Police (Conduct) Regulations to provide protection from disciplinary action for blowing the whistle by:

- Making it clear that disciplinary action should not ordinarily be taken against police officers for taking the necessary steps to report wrongdoing or poor practice in the police.

The Government will also amend the Police (Conduct) Regulations and guidance to provide protection from malicious allegations and other reprisals at a later date by:

- Ensuring proper consideration is given to whether a whistleblower may have been made subject to vexatious or unfair allegations and/or disciplinary or performance proceedings at a later date as a result of their previous whistleblowing; and
- Deterring damaging action being taken by other police officers against whistleblowers.

The intention is to protect police officers earlier in the process, preventing cases ending up in the Employment Tribunal.

Whilst police officers should not be discouraged from reporting any issue of concern, the protections in regulations will be aimed at those individuals who make a protected disclosure in accordance with the definition used in the Employment Rights Act 1996. That definition is likely to include any breach of the professional standards of behaviour, as these are statutory duties set out in regulations, and wider failings by the force to meet its legal obligations to the public and its staff. The requirement for the disclosure to be in the public interest is likely to exclude reporting of personal grievances.

Definition of a qualifying disclosure under the Employment Rights Act 1996

A “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

Protection from disciplinary action for blowing the whistle

The Police (Conduct) Regulations 2012 will be amended to provide that an officer’s actions, where reasonable in order to make a protected disclosure, should not be considered as bringing the force into disrepute or as any other breach of professional standards of behaviour. Whilst a protected disclosure must be in the public interest, it is not required to be made in good faith - the focus should be on tackling the wrongdoing or failing reported and not the whistleblower’s actions or reasons for reporting it.

The Employment Rights Act 1996 provides that a disclosure is not protected if the person making the disclosure commits an offence by making it. Criminal prosecutions against officers are a decision for the CPS. However the CPS will apply a public interest test in its decision to bring a prosecution, which includes consideration of the public interest in making the disclosure.

The media should be the last resort for a whistleblower. Police forces and the IPCC have mechanisms in place to deal with officers’ concerns and officers are expected to use them.

However there may be cases where an officer has attempted to go through the force PSD or the IPCC, or has good reason for being unable to do so, and disclosures to the media are protected under certain circumstances. Under these limited circumstances, a disclosure to the media should not be considered a breach of professional standards of behaviour. In assessing the public interest in making a disclosure, elements which are genuinely damaging to the public, for example disclosing names of victims or risking ongoing investigations and prosecutions, would need to be considered.

Media disclosures for personal gain, financial or otherwise, are explicitly excluded under the legislation and these proposals.

The protections will not prevent a whistleblower being subject to disciplinary proceedings for actions unrelated to their whistleblowing. Allegations of reprisals against a whistleblower must be proven. Individuals will not be able to simply cite whistleblowing and automatically evade sanction for genuine disciplinary matters.

Protection from malicious allegations and other reprisals at a later date

A reprisal against a whistleblower could take the form of a malicious allegation or a genuine conduct allegation where the whistleblower receives a more serious outcome than others who commit the same misconduct. Reprisals could also be in the form of bullying or personnel matters such as staff moves and promotion.

To protect officers from false or unfair allegations, the Home Office guidance on police officer misconduct, unsatisfactory performance and attendance management procedures will be amended to make clear that an officer investigating a conduct matter, and any subsequent misconduct hearing or meeting, should consider whether the allegations against an officer could be a reprisal for prior whistleblowing.

To deter all kinds of reprisals, including false allegations and other kinds of detrimental treatment by colleagues, the Home Office guidance will also make clear that an officer who knowingly instigates a reprisal against a whistleblower should be considered to have breached the standards of professional behaviour. A reprisal against a whistleblower would be expected to be treated as any other conduct matter is treated and investigated where the allegation has merit and evidence is available. It would need to be proven that the individual concerned had made a protected disclosure prior to the reprisal, that the individual who took the reprisal knew about that disclosure and that they caused detriment to the whistleblower because of it.

There may be some reprisals that would constitute a criminal offence. This could be due to the seriousness of the reprisal or where a whistleblower is a witness to a criminal matter, and an attempt is made to intimidate them. Any such instances should be dealt with under the criminal law.

Q8: Are any safeguards required to mitigate any possible negative implications for whistleblowers or for the police disciplinary process?

Q9: Are there any other changes to police regulations the Government could consider to encourage more police whistleblowers to come forward?

The financial and economic impact of holding misconduct hearings in public, introducing legally-qualified chairs and changes to protect whistleblowers

Holding hearings in public, introducing legally-qualified chairs and providing greater protection for whistleblowers is likely to have a financial impact on the police and may have a wider impact on other organisations.

An impact assessment that considers the economic impact of the proposals to hold misconduct hearings in public and introduce legally-qualified chairs is attached at annex A.

An impact assessment that considers the economic cost of changes to protect whistleblowers is attached at annex B.

For each impact assessment the Government seeks views on the following questions:

Q10: What familiarisation costs will there be for police forces? For example the cost of training staff on the new aspects of the system.

Q11: Are you able to provide any data or estimates that would enable the non-monetised costs in the impact assessments to be monetised?

Q12: Are there any further costs, benefits, or other impacts that should be considered in the impact assessments? Please provide data or estimates of the costs where possible.

Changes to Chief Officer Compensation Payments in Disciplinary Cases

Background

The current arrangements for compensation for senior officers are set out in Police Negotiating Board Circular 10/3: <http://www.local.gov.uk/web/workforcelibrary/police-negotiating-board-circulars>

The Circular provides for compensation to be payable where a Local Policing Body² decides not to extend a chief officer's fixed term appointment or where they are required to resign in the interests of efficiency or effectiveness under sections 38(3), 39(5) and 40(4) of the Police Reform and Social Responsibility Act 2011. No compensation is payable where an officer is dismissed for misconduct but where a misconduct finding is made against a senior officer and they are not dismissed but are given a lower level sanction, such as a final written warning, compensation payments are still payable in full.

Proposal

In the Independent Review of Police Officer and Staff Remuneration and Condition Final Report – Volume 1, Tom Winsor recommended that the Government provide misconduct hearings for senior officers with the ability to remove compensation payments for the contract of appointment to which a chief officer is currently subject, if they are found to have breached the standards of professional behaviour.

Further background on this recommendation can be found on page 323 of *Tom Winsor's Independent Review of Police Officer and Staff Remuneration and Conditions Final Report – Volume 1*.

<http://webarchive.nationalarchives.gov.uk/20130312170833/http://review.police.uk/publications/part-2-report/report-vol-1?view=Binary>

The Government intends to amend regulations so that the panel at either a misconduct meeting or a misconduct hearing can prohibit the payment of such compensation to the officer, either in full or above a certain amount or provide that the payment should be calculated differently, if the officer is given a final written warning. A final written warning is the most stringent sanction that can be applied short of dismissal. The intention is to ensure that a judicious decision can be made regarding the compensation due to officers that, whilst not dismissed, were found to have committed serious enough acts to justify a final warning.

Q13: The Government seeks views on this proposal; specifically the views of respondents are sought on the following questions:

- **Should the power of the panel to alter compensation payments be restricted further to findings of gross misconduct?**
- **Should the power be available to the panel of both a misconduct meeting and a misconduct hearing?**
- **Should the power of the panel to alter compensation payments be extended to cases that result in a written warning as an outcome as well as those cases that result in a final written warning?**
- **What impact will this have in terms of financial or other costs or benefits?**

² A Local Policing Body is the Mayor's Office for Policing and Crime in the case of the Metropolitan Police, The Common Council in the case of the City of London Police and the Police and Crime Commissioner in the case of all other Home Department Police Forces.

How to Respond

The Home Office would welcome any comments on the policies proposed in this document.

You can respond to the consultation online at www.gov.uk

You can also e-mail your response to the following e-mail address:

policeregsconsultation@homeoffice.gsi.gov.uk

Or send it by post to:

Police Disciplinary Regulations Consultation
Police Integrity and Powers Unit
6th Floor NW, Fry Building
Home Office
2 Marsham Street
London
SW1P 4DF

If you have any queries regarding the consultation or your proposed response, please contact the Police Integrity and Powers Unit at the e-mail address above.

Comments must be received by Friday 2 January 2015; we cannot undertake to consider any responses received after that date.

Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, other Government departments and related agencies for use in connection with this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with applicable access to information frameworks (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want certain information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this you should explain to us why you regard any information you have provided as confidential. If we receive a request for disclosure of the information we will take due account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The department will process your personal data in accordance with the DPA and, in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.