

Written evidence submitted by the Police Superintendents' Association (PCO0030)

[Note: This evidence has been redacted by the Committee. [***] represents redacted text.]

1. On the 28th October 2019 the Home Affairs Select Committee (HASC) announced an inquiry into the police conduct and complaints system. The Police Superintendents' Association (PSA) had some significant concerns about how the police conduct and complaints system was operating and how it was effecting our members health and well-being, so initiated the process to collect the necessary data and information to submit evidence to the inquiry. The PSA concerns centred around:

- The completion and fairness of 'severity assessments'
- The disproportionality and inconsistent application of restrictions/suspensions on officers
- The timeliness of investigations by both the IOPC and force professional standards departments
- The damaging blame culture and underuse of the performance procedures

2. In November 2019 as a result of the calling of a general election it was announced that:

"Due to the general election on 12 December 2019 the Committee has now closed this inquiry. Following the dissolution of Parliament on 6 November, all Select Committees will cease to exist until after the general election. If an inquiry on this subject is held in the future, the Committee may refer to the evidence already gathered as part of this inquiry"

3. By this time the PSA was already well advanced in the preparation of our report/evidence to HASC and were deeply concerned that the issues we were raising needed to be resolved. The PSA therefore took the decision to complete the report and submitted on the 29th January 2020 for it to be considered by the Police Advisory Board for England & Wales (PABEW).

4. The report was entitled: 'A Proposal to Improve Independent Accountability and Change the 'Blame Culture' Associated with Police Misconduct Investigations.'

5. The executive summary from the report contained the following objectives:

6. Police officers require consistency and improvement in the application of the misconduct regulations and procedures so that they provide:

A proportionate assessment of misconduct:

7. Currently, a severity assessment is undertaken in line with Paragraph 19B of Schedule 3 to the Police Reform Act 2002. This requires the investigator to notify the officer if he or she forms the view that there is an indication that the officer may

have committed a criminal offence or behaved in such a way which would justify the bringing of disciplinary proceedings.

8. The assessment must be made after consultation with the Appropriate Authority and on the basis of what would happen if the conduct was proved, not the likelihood of the conduct being proven. The assessment must be fully reasoned and documented.
9. The experience of officers under investigation is that the assessment of the misconduct is often disproportionate. There is an overwhelming view that in some cases the assessment is one of criminality in order to compel the officer to engage or to ensure that the investigator has extended powers for the purpose of evidence gathering, viewed by some as a 'fishing expedition'.
10. This issue may be addressed by the introduction of the early disclosure of the Terms of Reference of the investigation in the proposed Police (Conduct) Regulations 2019. This offers the opportunity for the officer to put in early representations to the Appropriate Authority should he or she believe that the misconduct assessment is unfair or disproportionate.
11. We suggest that there should be a further opportunity for an officer to request a review of the assessment decision through the use of Legally Qualified Chairs and their case management powers. This will enable all parties to engage with the issues that may have arisen in the process at a much earlier stage, providing the opportunities for all involved to consider their positions and act accordingly. This recommendation is made with the spirit of co-operation and fairness.
12. Under the proposed Police (Conduct) Regulations 2019, at Regulation 27, the role of the Chair of the Panel is defined. It is stated that the chair of the Panel 'must take appropriate action to ensure the efficient and effective bringing of the proceedings and that they are conducted in a timely, fair and transparent manner.'
13. There have been many changes to the regulations within police misconduct processes over recent years. They have not achieved the desired outcome in cultural change. It is the submission of this report that the case management powers set out in the proposed Regulation 27, could and should be interpreted to include the management of the investigation stage of misconduct matters. If this is not the case, then the powers of the LQC could be easily extended to be so.

Appropriate and proportionate restrictions that are applied case by case and regularly reviewed.

14. There is currently little guidance as to the appropriate use of restrictions for officers under investigation. There is disparity from force to force and even within certain forces, depending on the officer under investigation.

15. Suspension is defined in Regulation 10 of the Police (Conduct) Regulations 2012 and the expectations of the Appropriate Authority are set out in respect of the matters which should be taken into consideration when making the decision to suspend an officer or not. There is further assistance from judicial guidance in the case law relevant to the issue.
16. The situation in respect of the imposition of restrictions upon an officer under investigation is not clear and this contributes to the issues which are being experienced by officers in different forces.
17. Further, certain restrictions, such as, “the officer should not be involved in the evidential chain”, are applied almost universally, without due consideration as to the role of the officer concerned.
18. Challenges can be advanced on behalf of the officer, usually by their legal representatives or staff association as to the appropriateness or otherwise of the application of a restriction but again, there is no oversight or opportunity to have a decision reviewed, with the exception of a costly judicial process. This report recommends that this is another area which could be under the remit of a Legally Qualified Chair, by way of a formal review process.

Greater expediency in investigations and governance over timeliness.

19. This is a highly publicised and recognised concern of the police service and is reflected in the recent “Time Limits” campaign run by the Police Federation.
20. The new regulations^[1] require that where the investigation is not completed within a year, the investigator must provide an update to the local policing body detailing the progress of the investigation and when it is likely to be concluded. This change is welcomed.
21. This report will suggest that this is a further area where the Legally Qualified Chairs can assist by providing independent oversight, using their case management powers.

The improved and increased use of learning.

22. The Taylor Report (2005) led to the introduction of new Regulations in 2008 which intended to move the emphasis of the police discipline framework from punishment to professional development and improvement. Since that date, there have been numerous reports and reviews of the police discipline system leading to a further iteration of the regulations to be implemented in 2020 introducing the Practice Requires Improvement process in addition to the performance regulations.

^[1] Regulation 18, Police (Conduct) Regulations 2019 and Regulation 13, Police (Complaints and Misconduct) Regulations 2019.

23. It is hoped that this will see a change of focus from blame to learning and development. Under the new system, when undertaking the severity assessment, the Appropriate Authority will be required to consider whether the conduct would amount to practice requiring improvement or whether it should be referred to be dealt with under the Performance Regulations.
24. We suggest that if the officer is dissatisfied with the assessment then he or she should have the ability to request an independent review by a Legally Qualified Chair.

Independent review process outside of the IOPC for those officers under investigation.

25. This would be a review scheme managed by Legally Qualified Chairs, under their case management powers, to consider all matters relating to the investigation including, by way of examples, whether restrictions have been applied appropriately, whether the investigation is progressing in a timely fashion, whether a criminal investigation is appropriate (having considered the severity assessment rationale) and more generally, the proportionality of investigations.
26. In each of the objectives described above, we have identified areas where we believe Legally Qualified Chairs can provide independent oversight and review, giving officers under investigation confidence that the process is being used fairly and proportionately. This will achieve the objectives of independent accountability and professionalism, which will in turn achieve the cultural change required. This is discussed in more detail below.
27. Which led onto the following recommendations:
 1. We recommend that Legally Qualified Chairs (LQC) Association should be supported by the College of Policing.
 2. We recommend that the proposed Legally Qualified Chair's Association has representation on the Discipline Sub-Committee, in order for a collective view from LQCs to be sought and shared in relation to the management of police misconduct issues.
 3. It is the recommendation of this proposal that the PABEW, as the appropriate body, develops guidance in respect of the interpretation of Regulation 27, Police (Conduct) Regulations 2019, in accordance with the case management powers for Legally Qualified Chairs set out in detail within this report.
28. The recommendations above have been considered by the Discipline Sub Committee DSC, which is a sub committee of the PABEW. [***]

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29. The IOPC, NALQCs and the Home Office provided a written response to the DSC commenting on our concerns/recommendations.
30. Moving forward the PSA are concerned that simply changing policing regulations will not achieve the desired aim of moving away from a 'blame culture'. Police regulations have been re drafted on more than one occasion to try and achieve a move away from a 'blame culture', but these previous changes in the regulations have not achieved the desired outcome because what is needed is independent scrutiny of the investigatory and decision making processes. We are also concerned that the measures are not in place at this time to assess the effectiveness of the changes that were introduced by the new regulations in February 2020, especially in relation to measuring the effectiveness of the new 'Practice Requiring Improvement' provisions. This was debated in the 9th July meeting of the DSC [***]

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31. More recently a further issue has emerged that questions the independence of the police complaints and misconduct system. The earlier reforms to the police regulations introduced the role of Legally Qualified Chair to bring much needed independence into the hearings process. The PSA has raised concerns that Forces are increasingly using public money to judicially review the findings of Panels chaired by Legally Qualified Chairs, when they do not agree with the outcome. This has also been raised through the DSC [***]
32. The PSA would like to assist your committee's inquiry into police conducts and complaints and would welcome the opportunity to give evidence.

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