



Home Office

The Government Response to the 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.

March 2015

Changes to the Police Disciplinary System

Introduction

In her 22 July 2014 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). Those reviews have now concluded and two consultations have subsequently been carried out. The first on ***‘Improving Police Integrity: Reforming the Police Complaints and Disciplinary Systems’*** sought views on recommendations from the reviews. Subject to the consultation, the Government intends to implement those recommendations in the next Parliament. The Government has responded to that consultation separately.

In her statement, the Home Secretary also announced 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. The second consultation sought views on these proposals. This document (the Government Response) sets out the key themes which arose from the consultation and the Government’s response to those themes. A complete list of the consultation questions is provided at Annex A.

The measures consulted on in the publication ***‘Changes to the Police Disciplinary System’*** are:

Holding disciplinary and appeal hearings in public

To improve transparency and justice in the police disciplinary system, 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 ensure judgments 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.

About the consultation

The consultation was carried out between 18 November 2014 and 2 January 2015. In total, 64 responses were received. 62 of the 64 consultation responses gave views on proposals for hearings in public; 54 on legally-qualified chairs; 49 on whistleblowing; and 22 on the compensation proposals. The majority of responses were from police forces and individual police officers. The Government received a total of 13 responses from Police Staff Associations and stakeholders such as the Police Federation, Chief Police Officers Staff Association, the Superintendants' Association, the Independent Police Complaints Commission and the College of Policing. There were 11 responses from Police and Crime Commissioners, and there were 8 responses from individual members of the public.

The consultation followed a process of collaborative policy development, led by officials at the Home Office and involving partners from across policing, including the IPCC, Association of Policing and Crime Chief Executives, Association of Police and Crime Commissioners, Police staff associations' representatives, legal practitioners and Metropolitan Police Service Directorate of Professional Standards representatives.

Whilst all responses have been considered, this document does not attempt to set out the Government's response to each individual point raised in response to the consultation. Instead, it concentrates on the key themes which arose from the consultation and explains how they have been taken into account in shaping the proposals.

As described in the introduction, these changes to the disciplinary system are part of wider plans for major systemic reform, which have been consulted on separately due to the need for primary legislation and further detailed work. Several respondents raised a number of issues which will be considered substantively in the Government's response to the broader consultation '**Improving Police Integrity: Reforming the Police Complaints and Disciplinary Systems**'. The Government has responded to that consultation separately.

Next steps

Having considered the responses to the consultation and shared with (and considered the comments of) the Police Advisory Board on draft regulations, the Government has laid before Parliament a Statutory Instrument which amends the Police (Conduct) Regulations 2012. These regulations are subject to the negative resolution procedure. Guidance will also be published at the same time.

Format of the Government response

This Government response is organised into sections following the ordering of the consultation questions. We have set out the questions asked, a summary of the responses provided and the Government's response to these.

Occasionally, where it has been appropriate to do so, responses are treated under a different question from the one under which they were made.

Consultation Questions and Government Response

Hearings in Public and Legally-Qualified Chairs

Question 1: Hearings in public by default

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

The majority of respondents agreed with the principle of hearings, including appeals, in public; that the result will be greater public oversight of the system and increased transparency; and that this will in turn improve public confidence. The majority of respondents did not agree with holding special cases hearings in public as such hearings are sometimes considered simply on the papers, and therefore a public hearing in such cases would not be cost-effective.

Government response

The Government is clear that all hearings should be in public by default. It would not be in the public interest or benefit public confidence for certain types of cases to continue to be in private by default. Therefore the same provisions for hearings in public will apply to special case hearings as for other hearings.

Question 2: Benefits and costs of public hearings

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

Benefits

A large number of respondents mentioned transparency, greater public confidence and increased accountability. Some were of the view that public hearings will expose to scrutiny any delays in the system and any flaws could therefore be addressed. Others agreed that the public will have a better understanding of the system, and any misconceptions regarding police discipline are likely to be alleviated. Some suggested that public hearings will highlight that police forces already discipline their officers appropriately, and allow visible justice for interested parties, as well as greater legitimacy. A large number thought that the benefits of public hearings outweighed the disadvantages. There were also suggestions on how to deal with the concerns raised. For example, a preliminary case management review would enable the panel chair to identify whether the matter is suitable to be heard in public or, for example when sensitive information is discussed, members of the public could be asked to leave the hearing room. Anonymity orders were suggested as a way to protect the officer's identity in particularly sensitive cases. Some respondents also suggested holding the hearing in private but having a separate public hearing subsequently, if a finding of misconduct or gross misconduct is made.

Costs

There were mixed views about the potential costs. A significant number of the respondents raised concerns regarding logistics and the financial impact of holding hearings in public. This included concerns around security, safety, administrative support, accommodation/facilities, IT

equipment, disclosure of sensitive information, protection of vulnerable victims and witnesses, as well as concerns regarding media reporting. It was suggested that due to these issues, police officers and witnesses may be discouraged from giving evidence and this will cause hearings to be prolonged which will result in a protracted and more costly process. Some also felt that victims may be discouraged from coming forward, especially in cases of inappropriate sexual relationships. However, a few respondents who identified themselves as former complainants said that it would encourage them. A large number of respondents believed that police officers and staff would require some re-training. However a number of respondents felt that overall financial costs were likely to be minimal.

Government response

The Government has noted the concerns about accommodation and administration. As these are issues for individual police forces, the Government does not intend to prescribe exactly how public hearings should be held and administered, so as to allow the flexibility for forces to meet the objective of public access to proceedings without incurring significant additional costs.

The Government accepts the suggestion that, where necessary, early consideration by the chair of whether all or part of the hearing should be heard in private would help to address many of the concerns raised about how the hearings will be run. The regulations therefore facilitate preliminary consideration by the chair, on the papers, in advance of the hearing. Designated parties to the hearing including the officer concerned, any complainants, witnesses, interested persons or the appropriate authority will be able to make written representations to the chair in advance of the hearing date being published. The chair will therefore be able to consider ahead of the hearing whether it is appropriate for all or part of the hearing to be in private.

The Government disagrees with the suggestion to hold hearings in private and hold a public sanctions hearing in public subsequently, as this would not provide sufficient transparency in the decision-making process and could therefore reduce public confidence in the disciplinary system.

Question 3: Introduction of legally-qualified chairs

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

The majority of those who responded to these questions agreed with the proposal to introduce legally-qualified chairs. However, some respondents were against introducing legally-qualified chairs in special case hearings involving non-senior officers on the basis that there is no panel in such cases and therefore no one with operational policing expertise would be involved in the hearing. Many of those who agreed were of the view that the chair must be suitably qualified and possess some form of experience/expertise in this area.

Government response

The Government will proceed with the proposal to introduce legally-qualified chairs for disciplinary hearings. In relation to special case hearings, the Government is clear that operational policing expertise is an important part of the decision-making process in disciplinary hearings. Special case hearings involving non-senior officers will therefore continue to be chaired as now by chief officers (or as assistant commissioner in the case of the Metropolitan police force). However, the Government will keep the arrangements for special case hearings under review.

The Government supports the view that chairs of the panels must be suitably qualified. Disciplinary chairs will need to satisfy the judicial appointment eligibility condition on a 5-year basis (see Section 50 of the Tribunals, Courts and Enforcement Act 2007), which includes specific requirements for individuals to hold appropriate legal qualifications and mirrors the requirements for the appointment of chairs to the Police Appeals Tribunal.

Aims of legally-qualified chairs

There were suggestions that, if the aim of this recommendation is to achieve transparency and openness, the recommendation to hold hearings in public is likely to achieve this aim, so it negates the need to introduce legally qualified chairs to the system.

Government response

The Government is clear that openness and transparency will be improved through both holding hearings in public and introducing legally-qualified chairs. Independence is also an important feature, which is not currently part of the process. Introducing legally-qualified chairs will bring a variety of benefits to the disciplinary system but importantly it will also bring independence and greater objectivity.

Question 4: Benefits and costs of legally-qualified chairs

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

Benefits

Independence was cited in most cases as the main benefit. The majority of respondents stated that the introduction of legally qualified chairs would result in sound and legally reasoned judgments, reduced appeals, fair and consistent decisions, greater transparency and increased public confidence. Some respondents commented that any additional costs would be offset by freeing up time from senior officers who might otherwise be the chair. Costs would be saved by the reduction of appeals as well-reasoned determinations are less likely to be appealed and potentially speeding up complex cases. There would also be savings in not having to appoint legal advisors.

Costs

A significant number of respondents raised concerns regarding the costs of introducing legally-qualified chairs stating that these would cost more whereas a senior officer would be paid by the force in any event.

The majority of those who disagreed were of the view that this recommendation will lose the policing expertise that a senior officer brings to the panel. It was stated that the chief officer sets standards through misconduct hearings and public confidence is more likely to increase if the chief officer is seen to be disciplining police officers of their force. There were fears that misconduct hearings may become more adversarial and too legalistic.

Government response

The Government is clear that operational policing expertise is an important part of the decision-making process in disciplinary hearings. That is why the regulations provide for the continued presence on the panel of an officer of the rank of superintendent or above.

On costs; the Government published an Impact Assessment (IA) in November which estimated the likely costs to forces. The IA acknowledged that there is an additional financial cost to forces in paying for a legally-qualified chair in each case. However there will be a benefit to forces by freeing up the time of senior officers who currently chair hearings and removing the need for legal advisors who are used in around 47 per cent of cases.

Question 5: Decisions about hearings in public

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?

There was support for the factors that were set out in the consultation that the chair may need to take into account in deciding whether all or part of a hearing should be in private, including the welfare of any witnesses, complainant(s) and officer(s) subject to the misconduct hearing, and any factors relating to sensitive police operations or criminal proceedings.

Government response

The Government is satisfied that the list of factors proposed are appropriate and that there is adequate discretion available to chairs to address the concerns that have been raised, for example with regard to the wellbeing of officers who are subject to the hearing and the need to protect vulnerable victims and witnesses of police misconduct. The decision will also need to take into account the likely level of public interest in the proceedings. The list of factors will be set out in Home Office guidance.

Whistleblowing cases

A significant number of respondents said that giving evidence in public could deter whistleblowers from coming forward in the first place, or from giving full and frank evidence during a hearing. Covert and firearms officers were identified as at particular risk if their identity is made public as a result of giving evidence against a colleague. Respondents suggested that special measures, reporting restrictions and anonymity should be available to protect witnesses as they are in court.

One respondent raised the issue of protection for officers who disclose a failing by the force or a colleague during the course of a hearing, which may then be picked up by the media.

Government response

The Government agrees that identities of witnesses and victims, including police officers and staff, should not be disclosed publicly if that endangers their safety and welfare. The chair of the hearing may direct certain parts of the hearing to be held in private, or apply special measures as used in court in order to protect the witness's identity from being made public. This position will be made clear in the revised guidance accompanying the Regulations. In addition, the chair is already under a duty to require attendees to withdraw whilst evidence is being given that ought not to be disclosed to those attendees under the 'harm test'. This test is set out in regulation 4 of the Police (Conduct) Regulations 2012.

The guidance also clarifies that officers and staff should inform the chair before disclosing publicly any information that would be harmful. Providing this is met, any disclosure in the course of giving evidence at a hearing in public is protected from disciplinary action.

Question 6: Information about public hearings

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

The majority of respondents suggested force websites could be used to advertise details of the public hearings, including time and location. Forces could also publish a detailed report of the determination and sanctions. Some respondents suggested the websites of the College of Policing's and the IPCC could also be used, as well as social and local media. Some respondents also mentioned it would be helpful to publish the College of Policing's disapproved register. Since December 2013 the College of Policing has been collecting information on officers dismissed from the police. Those officers are then added on the register. Data for the first year is currently out for verification by police forces and will be published by the College once verified.

Government response

The Government does not intend to prescribe all aspects of how each police force should administer public hearings. However, the guidance will be clear that information relating to public hearings must be published on the website of the appropriate force and that the Government expects forces to go further where possible to promote and facilitate public access to hearings.

Question 7: Accessibility of hearings in public

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

The majority of respondents did not agree with live streaming hearings, the taking of photographs during hearings or the use of audio recording, except for official use, citing the potential for misuse through social media, which could adversely affect the future career prospects of police officers.

Government response

The Government does not intend to prescribe how each police force should administer public hearings. It will be for police forces to decide how to most effectively ensure public access to hearings and for chairs to decide what conditions to place on those who attend.

Question 8: Further costs, benefits or other impacts

Are there any further costs, benefits, or other impacts that should be considered in the impact assessment?

A small number of respondents felt that the IA published alongside the consultation would benefit from further information, and did not detail other costs that were likely to be incurred. This included accommodation/facilities, recruitment of additional staff and security. A very few respondents attempted to quantify costs of accommodation at approximately £5,000.

Government response

Some forces have previously indicated that they already have suitable premises to hold public hearings. The Government also sought additional data from police forces through the

consultation. Estimates of cost vary depending on the approach to administering the public hearings and therefore it is not possible for the Government to estimate with certainty how much each hearing may cost for each force. The Government does not expect the costs of hearings in public to be significant compared to the cost of holding hearings in private. Forces will have discretion to administer hearings in the most cost-effective way, including for example the sharing of resources between two or more forces where possible. An updated IA is being published alongside the Government response.

Protections for Whistleblowers

Question 9: Safeguards for whistleblowers

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

Respondents identified a number of safeguards and clarifications to definitions to ensure only genuine whistleblowers acting in the public interest benefit from protection under the proposals. Safeguards for whistleblowers required to give evidence at hearings in public were also identified. The key issues are set out below. A number of respondents raised the complexity of the definitions and the need for guidance. This has been provided alongside the Regulations and sets out the Government position in more detail.

Misconduct committed by whistleblowers

A number of respondents said that whistleblowers should not be immune from having action taken against them if they are guilty of misconduct or poor performance themselves. Such immunity might result in corrupt officers exploiting the protections afforded to whistleblowers.

Government response

The Government has always been clear that police whistleblowers cannot evade sanction if they are guilty of corruption or misconduct themselves. The new Regulations state that making a protected disclosure (as defined by the Employment Rights Act 1996) is not a disciplinary matter. Otherwise the guidance recommends that the possibility a whistleblower has been unfairly disciplined in retaliation for their disclosure is considered at each stage of the process. Such an assessment would be made using the evidence available. The introduction of legally-qualified chairs and hearings in public provides a further deterrent to the possibility of a whistleblower being subject to vexatious disciplinary proceedings.

False allegations

A significant number of respondents raised concerns about the use of false allegations by corrupt officers, for example to disrupt investigations into their own activities. Some police forces added that motive was important when considering reports made by a whistleblower.

Government response

Under the Government's proposal, only officers who make a protected disclosure within the meaning of the Employment Rights Act 1996 will be protected. Dishonest officers who make deliberately false allegations are not whistleblowers. A disclosure is only protected under the 1996 Act if, in the reasonable belief of the whistleblower, the information tends to show that misconduct or malpractice has occurred. Deliberately false allegations will never be protected disclosures and may be assessed as gross misconduct.

Media disclosures

In their responses, a small number of police forces stated that they did not support reporting to the media or that this would only be appropriate when all internal processes are exhausted. Conversely, two respondents representing media organisations believed media whistleblowers should be protected in any circumstances.

Government response

Whistleblowing to the media should be a last resort. Police forces and the IPCC have robust mechanisms in place to deal with officers' concerns and officers are expected to use these existing channels. Other alternative reporting routes including staff associations and the local policing body may also be used. However, there may be circumstances where, for example, an officer has attempted to disclose a serious matter internally or to the IPCC but no action has been taken, and it is in the public interest and reasonable for the matter to be escalated. Any harm caused by breaching confidentiality in order to make a public disclosure would be part of the consideration as to whether that disclosure was reasonable.

A media disclosure made for personal gain, financial or otherwise, is never protected by the 1996 Act and may constitute an offence of police corruption.

Question 10: Other changes to encourage whistleblowers

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

A significant proportion of police forces thought existing protection for police whistleblowers was sufficient because in-force reporting systems are available and frequently used, officers are already required to report misconduct under the Standards of Professional Behaviour, and police whistleblowers are already protected under the Employment Rights Act 1996.

Government response

The Government wants to ensure that officers can use the available reporting routes and fulfil their duty to report misconduct with confidence. HMIC's police integrity and corruption inspection¹ found considerable variation in reporting arrangements and support for whistleblowers between forces. Staff associations also highlighted occasions where they have had to support police whistleblowers who have had misconduct proceedings wrongly brought against them or been subject to bullying. The ERA 1996 offers a remedy to police whistleblowers only once this detriment has been suffered. By this point the damage has been done, not just to the whistleblower themselves, but to the likelihood of others coming forward in the future. The Government will ensure the principles of the ERA are incorporated earlier in the process, so that whistleblowers are protected rather than being offered a remedy after the event.

Respondents suggested a number of further proposals to encourage officers and staff to come forward. Some of these are covered by measures the Government is taking forward already:

National whistleblowing policy

¹ HMIC 'Integrity Matters' inspection, January 2015: <https://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/police-integrity-and-corruption-2015.pdf>

Several respondents put emphasis on the importance of developing and maintaining an open reporting culture within the police, which values those willing to come forward and report wrongdoing.

Government response

The Government recognises the importance of such a culture and the College of Policing is developing national guidance for forces on whistleblowing. The guidance will be an opportunity to address other issues raised by respondents including support and welfare for whistleblowers, access to occupational health and assistance in relocating to another role where necessary.

Data publication

Some respondents suggested more data should be available about how forces deal with internal reports of misconduct.

Government response

From April 2015 forces will be required to collect data on the number of conduct matters reported internally, and action taken as a result. This data will be published to demonstrate to the public and to prospective whistleblowers the action being taken internally to address misconduct, including that reported by whistleblowers.

Leniency

A number of forces raised the issue of offering whistleblowers leniency where they were involved in the wrongdoing which they reported. A small number of forces also suggested that disciplinary proceedings relating to 'failing to challenge and report' could be waived if officers report at a later date.

Government response

The Government agrees that leniency might encourage individuals to come forward, and forces may wish to consider it in a particular case. The mitigation offered by coming forward would need to be weighed against the individual's level of involvement, and any damage caused by their failure to disclose at the time. Officers guilty of serious misconduct should be dealt with under the disciplinary system, even if they do come forward with information. The Government's '*Consultation on Improving Police Integrity*' considered whether there was a need for special consideration of immunity from prosecution for police whistleblowers. However, on the basis of the responses it received, the Government does not believe that there is sufficient evidence at this time to justify any change to the existing provision for immunity from prosecution under the Serious Organised Crime and Policing Act 2005 (SOCPA).

Chief Officer Compensation

Question 11: Restricting compensation for gross misconduct

Should the power of the panel to alter compensation payments be restricted further to findings of gross misconduct?

The majority of those who responded felt that the power to alter compensation payments should be restricted to findings of gross misconduct where a final written warning is given.

Those who were not supportive of this recommendation commented that officers would be deterred from seeking promotion. It was also felt that officers who are found guilty of gross misconduct should be dismissed, and that removing compensation in the way proposed would be an inappropriate use of a disciplinary sanction for dealing with financial matters that affect individuals.

Government response

The public rightly expects Chief Officers to display the highest possible standards of integrity. The proposed new power for panels is discretionary to use in final written warning cases they deem to be appropriate. So, in cases that do not involve gross misconduct, the panel will not have to make an order restricting compensation unless it considers it is appropriate to do so. There will also be a right of appeal to the Police Appeals Tribunal against a decision to make an order restricting compensation. Furthermore, there may be cases involving more than one act of misconduct over a period of time that could be considered serious enough to justify removing or reducing compensation. The Government is therefore satisfied that it would not be appropriate to restrict the discretion of the panel only to cases of gross misconduct.

Question 12: Power available for misconduct meetings and hearings

Should the power be available to the panel of both a misconduct meeting and a misconduct hearing?

Only a small number of respondents answered this question. A few respondents were of the view that the power should be available at a misconduct meeting and a misconduct hearing, while others felt that it should only be used for misconduct hearings.

Government response

The Government is clear that giving panels the ability to restrict compensation in cases where the outcome is a final written warning is the appropriate level, whether that is at a misconduct meeting or a hearing. Given the power is discretionary for use by the panel in cases they deem to be appropriate, the Government sees no reasonable justification to make a distinction between the routes of misconduct proceedings.

Question 13: Extend to written warnings

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?

The majority of those who responded felt that the power to alter compensation payments should be restricted to findings of gross misconduct where a final written warning is given.

Government response

The Government is clear that panels should have the ability to restrict compensation in cases where the outcome is a final written warning. The Government's view is that this is likely to cover sufficiently serious cases and it would not be appropriate to extend the powers to cover less serious cases where the outcome is a written warning.

Annex A: Summary of Consultation Questions

1. Do you agree that misconduct hearings, special case hearings and Police Appeals Tribunals should be held in public by default?
2. What benefits or costs do you think holding hearings in public will entail?
3. Do you agree that legally-qualified chairs should be introduced to chair the panel in disciplinary and special case hearings?
4. What benefits or costs do you think the introduction of legally-qualified chairs will entail?
5. 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?
6. How could the police best engage the public and inform them about police disciplinary and appeal hearings, outcomes and processes?
7. Are there any issues or practical factors the Government needs to consider regarding the accessibility of hearings to members of the public?
8. Are there any further costs, benefits, or other impacts that should be considered in the impact assessment?
9. Are any safeguards required to mitigate any possible negative implications for whistleblowers or for the police disciplinary process?
10. Are there any other changes to police regulations the Government could consider to encourage more police whistleblowers to come forward?
11. Should the power of the panel to alter compensation payments be restricted further to findings of gross misconduct?
12. Should the power be available to the panel of both a misconduct meeting and a misconduct hearing?
13. 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?