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HM INSPECTORATE OF CONSTABULARY IN SCOTLAND

# Assurance review of Conduct and Discipline

## - Terms of Reference

September 2024

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Improving Policing Across Scotland

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# HM Inspectorate of Constabulary in Scotland

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HM Inspectorate of Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012<sup>1</sup> and has wide ranging powers to look into the 'state, effectiveness and efficiency' of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA).

We have a statutory duty to ensure that the Chief Constable and the SPA meet their obligations in terms of best value and continuous improvement. If necessary, we can be directed by Scottish Ministers to look into anything relating to the SPA or Police Scotland as they consider appropriate. We also have an established role in providing professional advice and guidance on policing in Scotland.

- Our powers allow us to do anything we consider necessary or expedient for the purposes of, or in connection with, the carrying out of our functions
- The SPA and the Chief Constable must provide us with such assistance and co-operation as we may require to enable us to carry out our functions
- When we publish a report, the SPA and the Chief Constable must also consider what we have found and take such measures, if any, as they think fit
- Where our report identifies that the SPA or Police Scotland is not efficient or effective (or best value not secured), or will, unless remedial measures are taken, cease to be efficient or effective, Scottish Ministers may direct the SPA to take such measures as may be required. The SPA must comply with any direction given
- Where we make recommendations, we will follow them up and report publicly on progress
- We will identify good practice that can be applied across Scotland
- We work with other inspectorates and agencies across the public sector and co-ordinate our activities to reduce the burden of inspection and avoid unnecessary duplication
- We aim to add value and strengthen public confidence in Scottish policing and will do this through independent scrutiny and objective, evidence-led reporting about what we find.

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<sup>1</sup> [Chapter 11, Police and Fire Reform \(Scotland\) Act 2012.](#)



Our approach is to support Police Scotland and the SPA to deliver services that are high quality, continually improving, effective and responsive to local needs.<sup>2</sup>

**This assurance review will be undertaken by HMICS under section 74(2)(a) of the Police and Fire Reform (Scotland) Act 2012 and will be laid before the Scottish Parliament under section 79(3) of the Act.**

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<sup>2</sup> HMICS, [Corporate Plan 2021-2024](#), February 2022.



## Our audit

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### Introduction

1. HM Inspectorate of Constabulary in Scotland (HMICS) has committed to an assurance review of conduct as part of its Scrutiny Plan for 2022-25.<sup>3</sup>
2. This followed a wide-ranging consultation undertaken by HMICS during 2021 to inform future scrutiny planning. HMICS assurance reviews allow for more detailed scrutiny where there is a specific need to audit critical systems, ensure accurate and ethical recording or provide independent assurance in high risk areas.
3. How Police Scotland and the Scottish Police Authority deal with misconduct and discipline is an area of significant public interest, particularly in light of recent incidents across the UK.
4. The HMICS Scrutiny Plan states that we will examine how misconduct is dealt with by the organisation, whilst also looking at preventative approaches and how Police Scotland seek to ensure appropriate behaviours are displayed by all members of staff, which is vital for public confidence.

### Aim

5. The aim of this assurance review of conduct and discipline will be to assess the state, efficiency, and effectiveness of officer and staff conduct and discipline processes within Police Scotland and the Scottish Police Authority.

### Background

6. The conduct of those working for the police has been subject to heightened public scrutiny over recent years due to high profile, shocking cases of misconduct carried out by those who work within the Police Service. Subsequent reviews have highlighted failings in police conduct processes and have raised concerns about the culture within policing.

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<sup>3</sup> HMICS, [Scrutiny Plan 2022-25](#).



7. Police Scotland and the Scottish Police Authority were created in 2013 with the passing of the Police and Fire Reform (Scotland) Act 2012. Following commencement of this legislation in 2013 there were a number of regulations approved by the Scottish Parliament which sought to govern the performance and conduct of police officers. These include;
  - The Police Service of Scotland (Conduct) Regulations 2013
  - The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013
  - The Police Service of Scotland (Performance) Regulations 2014
  - The Police Service of Scotland (Conduct) Regulations 2014
8. The standards of professional behaviour are enshrined within Schedule 1 of the 2014 conduct regulations, in addition to which Police Scotland has a non-statutory code of ethics. These set out the standards by which officers and staff should behave, and what the public have a right to expect.
9. Following post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 by the Justice Committee in 2018, the then Cabinet Secretary for Justice in conjunction with the Lord Advocate established an independent review of the process for handling complaints against the police and investigating serious incidents and alleged misconduct. This review was led by Lady Elish Angiolini: she published her [preliminary report](#) in June 2019 and her final report, [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing](#), in November 2020. Lady Angiolini made 111 recommendations across both reports and whilst a number of these recommendations have been closed (over 50 non-statutory recommendations), a number are still outstanding with some requiring legislative change. The impact of the work undertaken to close actions on conduct processes and proceedings has not yet fully been assessed.
10. In 2023 HMICS Thematic Inspection of Organisational Culture considered standards of professional behaviour and ethics as integral to the aspirational culture of Police Scotland. The report found that while there was no identified specific aspects of culture which prompted misconduct, there were behaviours that perpetrate over and under reporting of instances of misconduct within the service. The report also stated that whilst some analysis of trends associated with complaints and misconduct was taking place, this was limited by the data being recorded and supporting analytical expertise.



'Misconduct and grievance processes are perceived as lacking openness, transparency, fairness and pace of resolution. There was a general lack of trust in these processes, and we found they are having a direct and often damaging short and longer term impact on individuals and teams, which the service often fails to recognise'.

11. This inspection highlighted two specific areas for development in respect of conduct, namely;
  - Police Scotland should focus analysis of misconduct, grievance and associated HR processes on identifying causal factors and underlying cross-cutting themes for wider organisational learning.
  - Police Scotland should improve through-care and after-care for misconduct and grievance cases, taking into account both the individuals and the teams involved.
12. Police Scotland recently submitted their Improvement Plan to HMICS setting out how they will address these recommendations. Further work is required to identify timelines for implementation of these actions.
13. [The Police \(Ethics, Conduct and Scrutiny\) \(Scotland\) Bill \(the Bill\)](#) seeks to make amendments to the Police, Public Order and Criminal Justice (Scotland) Act 2006 and the Police and Fire Reform (Scotland) Act 2012 in four areas, two of which relate to ethics and conduct.
14. Sections 2 and 3 of the Bill cover the ethics of the police. These sections;
  - create a statutory obligation for Police Scotland to have a code of ethics, and
  - place a statutory duty of candour on individual police officers and Police Scotland as an organisation.



15. Sections 4 and 8 of the Bill cover aspects of police conduct. These sections;
- clarify that the SPA is liable for the unlawful conduct of the Chief Constable
  - amend the functions that can be conferred on Police Investigations and Review Commissioner (PIRC)
  - provide a power to allow misconduct procedures to be applied to former police officers,
  - introduce an advisory list for police officers under investigation for alleged gross misconduct, and a barred list for officers dismissed, or who would have been dismissed, due to misconduct, and
  - amend misconduct procedures for senior police officers, including requiring an independent panel to determine such cases.
16. The Bill is currently at Stage 2 with evidence having been submitted and given to the Justice Committee by interested parties for consideration.

### Police staff discipline

17. Police staff undertake a variety of roles including roles at senior and executive level within Police Scotland. Many of those roles include direct contact with the public and access to sensitive information. Unlike police officers, police staff discipline is not subject to regulation and is a contractual matter and subject to employment law. The standards of professional behaviour expected of police staff mirror that of officers, and are detailed within a code of conduct. Where there has been alleged wrongdoing the processes and procedures to investigate such allegations are not regulatory but are defined in employment law and Police Scotland Standard Operating Procedures which are under the management and ownership of People and Development.



# Terms of Reference

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## Scope, objectives and outcomes

18. This inspection will be undertaken by HMICS in terms of the Section 74(2)(a) of the Police and Fire Reform (Scotland) Act 2012.
  
19. The objectives for this assurance review are to;
  - Provide assurance that Police Scotland and Scottish Police Authority appropriately identifies, assesses, records, investigates and concludes breaches of the standards of professional behaviour and allegations of wrongdoing in line with current policy, process, regulations and legislation.
  
  - Assess if effective prevention strategies and interventions are in place to address inappropriate behaviours and culture identified during conduct enquiries.
  
20. The assurance review will consider the efficiency and effectiveness of;
  - Policies, procedures and processes pertaining to the identification, assessment, recording and investigation of misconduct and gross misconduct allegations relating to senior police officers, which is the responsibility of SPA
  
  - Policies, procedures and processes pertaining to the identification, assessment, recording and investigation of misconduct and gross misconduct allegations relating to police officers and police staff, which is the responsibility of Police Scotland
  
  - Adherence to statutory regulations
  
  - Preventative approaches and interventions designed to address inappropriate behaviour and culture within Police Scotland
  
  - Care and wellbeing of officers and staff who are subject to misconduct allegations
  
  - Care and wellbeing of officers and staff who are identified as victims or witnesses in misconduct proceedings



- Effectiveness of whistle blowing process, which can highlight allegations of wrongdoing, resulting in misconduct or discipline proceedings
- Management of officers and staff post misconduct and discipline allegations and investigations
- Effectiveness of current legislation and investigatory tools
- Assessment of conduct and discipline data to identify any disproportionality of impact or outcome of disciplinary or conduct proceedings on any gender or ethnicity
- The processes and decision making for misconduct and discipline matters which result in criminal investigations
- Reporting and scrutiny arrangements for conduct matters.

## Exclusions from scope

21. This inspection will not consider

- Criminal prosecutions of police officers and police staff which fall within the remit of Crown Office and Procurator Fiscal Service Criminal Allegations Against the Police Division (CAAP-D), however any concurrent conduct and discipline processes will be within scope.
- Handling of complaints about the police which are under the jurisdiction of Police Investigation and Review Commissioner (PIRC). It is understood that such complaints can become matters which fall within the auspices of conduct or discipline.



## Outputs

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22. The key output from the review will be the final report. The intended outcomes from this review and its publication are to provide an assessment of how efficiently and effectively Police Scotland and The Scottish Police Authority are responding to misconduct and/or discipline. This will be to:
- Provide assurance that Police Scotland and The Scottish Police Authority assess, investigate and deal with allegations, reports and instances of misconduct and discipline in a timely, proportionate and effective manner within the auspices of current policy, procedures, regulations and legislation.
  - Provide an assessment as to whether suitable capacity, capability and skills are in place to effectively deal with misconduct / discipline and wrongdoing when it occurs.
  - Provide an assessment of whether effective prevention strategies and interventions are in place to identify and address inappropriate behaviours and culture within the organisation.

### User perspective

23. As set out in the Public Services Reform (Scotland) Act 2010, HMICS has a duty to demonstrate continuous improvement in user focus, i.e. involving users in the scrutiny process. We will endeavour to obtain an accurate as possible perspective of key stakeholders groups through public engagement and consultation.
24. HMICS will engage directly with Police Scotland and Scottish Police Authority officers and staff to obtain views and their perspective of how both of these organisations appropriately identify, assess, record, investigate and conclude misconduct or discipline processes. We will speak with officers and staff who have experience of having been part of conduct and discipline processes as subject officers, victims or witnesses and those involved in investigations and as part of conduct panels.



## Methodology

25. We will use the HMICS Inspection Framework which is based on the European Foundation for Quality Management (EFQM) Excellence Model and Best Value Characteristics.
  
26. The Inspection Framework will provide a structure to our inspection which will be risk based, proportionate and focused on improving the delivery of policing in Scotland. We will structure our inspection around our objectives and the key themes of:
  - Leadership and vision
  - Delivery
  - Outcomes
  
27. Between August 2024 and December 2024 we will:
  - Identify a single point of contact (SPOC) for HMICS in Police Scotland and the Scottish Police Authority to support the review and to facilitate appropriate access to people and information
  - Liaise regularly with Police Scotland and the Scottish Police Authority
  - Issue a document request and undertake a document review of relevant Police Scotland and the Scottish Police Authority strategies, policies and procedures
  - Issue a request for a self-evaluation to be conducted by Police Scotland and the Scottish Police Authority, and analyse the results of this
  - Liaise with Justice Analytical Services to obtain advice on the sampling approach to be adopted for the review of misconduct reports and investigations
  - Conduct a review of police officer misconduct reports and investigations to consider the assessment, recording, and management of misconduct allegations. We will also consider the consistency of decision making, adherence to statutory regulations and effectiveness of end-to-end processes



- Conduct a review of police staff discipline reports and investigations to consider the assessment, recording and management of allegations of wrongdoing. The consistency of the decision making, adherence to policy and processes and effectiveness of the end-to-end processes
- Benchmark with other appropriate police organisations
- Engage directly with relevant officers and staff using interviews where appropriate. Topic guides will be devised to assist in this process.

### Publication and reporting timescales

28. We anticipate publishing a report of our findings in April 2025. Our report will be published in terms of Section 79 of the Police and Fire Reform (Scotland) Act 2012. A copy of the report will also be provided to the Chief Constable, the Scottish Police Authority and the Cabinet Secretary for Justice and laid before the Scottish Parliament. A copy will also be made publicly available on the HMICS website.
29. For further information about the assurance review of conduct, please contact Maggie Pettigrew, Lead Inspector.

### **Craig Naylor**

HM Chief Inspector of Constabulary in Scotland

September 2024