

Report to: Police Authority
Agenda #: 4.2
Date: 24 June 2020
Subject: Police Integrity Regulatory Changes
Sponsor: Chief Executive
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For: Approval

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1. Purpose of paper

- 1.1 At the Authority meeting in March 2020 the Authority was presented with the proposed changes to the police complaints and disciplinary systems being introduced following the implementation of reforms set out in the Police and Crime Act 2017. The Executive indicated at the time that activity was underway with a view to the regulations being presented for Authority for approval in June.
- 1.2 Approval is now being sought in relation to the following regulations which can be found within the appendices to this item:
 - The British Transport Police (Complaints and Misconduct) Regulations 2020.
 - The British Transport Police (Conduct) Regulations 2020.
 - The British Transport Police (Police Appeals Tribunal) Regulations 2020.
 - The British Transport Police (Performance) Regulations 2020.

2. Background

- 2.1 The Authority may recall the background to these reforms that in 2013, the then Home Secretary Theresa May initiated the expansion of the IPCC, now Independent Office for Police Conduct (IOPC). In March 2015 the Government published plans for reforming the police complaints and disciplinary systems. This followed an end to end review (known as the Chapman Review) which made a number of changes.
- 2.2 In January 2017 the Policing and Crime Act 2017 achieved Royal Assent which was the vehicle to introduce wide-reaching reforms across the entire system following the Chapman Report. The implementation of these changes was intended to be brought about by three phases.

- 2.3 All three phases have now been implemented for Home Office Forces, with phase three which presents the most ambitious and significant changes, coming into effect on 1 February of this year following a series of delays as a result of other Parliamentary pressures.
- 2.4 As previously advised, these wider reforms reflect a cultural shift. The changes aim to make the complaints system more customer focused, ensure the system is proportionate, less adversarial with greater emphasis on learning and improvement. This is welcomed by the large majority in the professional standards arena, including BTP. It is also evident that there is a strong appetite for BTP to remain aligned with Home Office Forces in this area of policing.
- 2.5 In order for the reforms to be successfully implemented, the organisation will be required to respond proactively and positively and with greater emphasis being on promoting a learning culture. It is important to note that the changes are not limited to work carried out by Professional Standards Departments as they require a cultural shift. The Executive has been in regular dialogue with BTP and understand that supporting workstreams have been identified, if not already in train, to support the successful implementation of the changes. The Force remains confident that a commencement date of 1 September can be successfully met.

3. The Proposed Regulations

- 3.1 The Authority is invited to refer to the newly drafted regulations found at Annex A. They are made under s36 and s37 of the Railways and Transport Safety Act 2003.
- 3.2 The Authority will be aware that as a result of the BTP being governed by different primary legislation, these reforms do not automatically apply. As such, the Authority is required to draft its own regulations mirroring as far as possible those made by the Home Office under sections 84 and 85 of the Police Act 1996. The new regulations will succeed the following:
- BTP (Complaints and Misconduct) Regulations 2015.
 - BTP (Conduct) Regulations 2015.
 - BTP (Performance) Regulations 2015.
 - BTP (Police Appeals Tribunals) Regulations 2015.
- 3.3 Below is an overview of the changes introduced. The most noteworthy of these are reflected within the BTP (Conduct) Regulations 2020: -
- The introduction of the new concept of 'Practice Requiring Improvement'.

- The introduction of time limits including for the IOPC in respect of Independent Investigations.
- Potential for early review of misconduct allegations.
- Pre-hearings to take place in misconduct proceedings.
- The ability for the IOPC to present its own cases and to initiate investigations rather than waiting for referrals from forces.
- Changes to available outcomes including the removal of Management Action, Management Advice and the extension to a Final Written Warning. The re-introduction of reduction in rank as a sanction being the most significant.
- Increased powers for the IOPC to conduct all investigations involving Chief Officers.
- Appeals replaced by a new system of reviews for which the local policing bodies will become the review body for locally handled investigations, where this was previously the Chief Constable.
- A shortened process for deciding whether a case should go to a disciplinary hearing.
- A new system of super-complaints so certain designated bodies can complain about trends and patterns.

3.4 Changes that will impact the Authority are as follows:

Change	Comment
All complaint and conduct matters against Chief Officers requiring investigation will be dealt with by the IOPC.	This is a welcome and helpful change and will offer a greater level of confidence to the public. Currently the Executive has to identify a Chief Officer of a commensurate rank in a separate force to take on these investigations, which can prove to be difficult and time-consuming.
Local appeals currently handled by the Force will be dealt with by the BTPA.	Whilst this will create some additional work it will be complementary to the Authority's existing governance and oversight of legitimacy. It also provides an extra layer of independence which will be welcomed by the public.
The Authority will be notified of all investigations, whether handled by the Force or IOPC, which have been ongoing for 12 months and provided with an explanation for the delay in completion.	This will also assist the Authority's oversight function.
The Authority will be	This will create some additional work as whilst the Authority

responsible for appointing Legally Qualified Chairs (LQCs).	is responsible for the recruitment of LQCs at present, in practice it then provides the list to the Force who make contact with LQC's as required for hearings. This is an extra step where a member of the executive will need to contact LQCs and appoint to individual hearings to ensure that a police force does not build a relationship with a particular Chair.
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Implementation

- 3.5 In order for the regulations to be implemented, the Authority will be required to enter into a formal agreement with the Home Office and the IOPC. The timings for implementation will in part be dependent on the readiness of the IOPC which is responsible for drafting a new agreement in relation to phase 3 of the programme. The Executive continues to work closely with these organisations and work is in progress to support the intended timeline of the new regulations being adopted by BTP from 1 September 2020. Given the work which has already gone into the drafting of the new regulations and the limited differences to the Home Office versions, the Executive does not foresee any issues arising from the drafting of this agreement.
- 3.6 The arrangements are different in Scotland with a Police Investigations and Review Commissioner (PIRC) whose powers differ from those of the IOPC and with the Procurator Fiscal as opposed to the Crown Prosecution Service. These differences are dealt with by way of policy which supports the implementation of the regulations, as the processes to be followed remain the same, it is only the involvement of these agencies at the various stages that may differ.
- 3.7 The redrafting of an agreement with the Police Investigation Reviews Commissioner (PIRC) is progressing in parallel. This does not have a direct impact on implementation but is an important document which sets out the framework for the handling of allegations and investigations Scotland, where the IOPC and Home Office do not have a remit. The existing Memorandum of Understanding (MoU) has not been updated for some time and given the extent of the regulatory changes, the Executive has identified this as the appropriate time for this to be undated.

Consultation

- 3.8 Before the regulations are implemented, they will be subject to consultation. The staff associations have been made aware of the amendment regulations for some time, but a formal consultation process has now commenced. Representatives of these groups have until the end of June in which to submit their comments in relation to the proposed regulations.
- 3.9 Thereafter a dedicated conference with the Federation will be arranged, in accordance with s46 of the 2003 Act.

Areas of divergence

- 3.10 The only significant area of divergence from the regulations adopted by the Home Office is the Police Barred and Advisory Lists. These are records

overseen by the College of Policing. The former contains details of officers, Special Constables, and staff members who have been dismissed from policing through the Police Conduct and Performance Regulations, as well as the equivalents for police staff. The Advisory List serves a similar purpose but in respect of employees who have resigned or retired during an investigation. The concept was to increase the accountability of those who are dismissed from policing and ensure these individuals are not able to find positions elsewhere in policing. This information is published as part of the Government's commitment to improving police integrity.

- 3.11 Owing to legislative differences, the BTP/A has not been able to adopt this aspect of the regulations in full. The Executive has explored this further with the Home Office and have been advised that the Home Office is looking into its ability to provide legislation to extend the list of bodies who must consult the list before employing an individual on the barred list, but this is an extensive process and will take some time. It is our intention to make amendment regulations to cover this once the legislation is finalised. In the meantime, the Professional Standards Department has processes in place to mirror the intentions of the Barred and Advisory lists. These procedures are said to produce the same result but are not as efficient.
- 3.12 From a legal perspective, participating in the barred and advisory lists carries a small level of risk of challenge, but this must be balanced against the risk of an unsuitable individual being re-employed into the police service and therefore is considered the correct course of action.

4. Recommendation

- 4.1 The Executive recommends that the Authority approves the regulations in principle recognising that the consultation remains ongoing, delegating any minor amendments that may arise from this process to the Chair.
- 4.2 In the event that any significant changes are required the regulations will be presented back to the Authority.