



SCOTTISH POLICE FEDERATION

Established by Act of Parliament

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Response of the Scottish Police Federation to the Scottish Government's Consultation on Proposals to Improve the Scottish Specific Duty Regime.

The Scottish Police Federation represents police officers from Constable to Chief Inspector rank in the Police Service of Scotland. We are responding to this consultation as we have significant concerns regarding the way the current Specific Duties regime, under provisions of the Equality Act 2010 public sector equality duty, is operated by the Force.

We recognise that the public sector equality duty was designed to improve equality for people from minority groups in employment and in their experience of public sector services, in particular in this instance, by the Police Service of Scotland. The Scottish Specific Duties regime and the rigorous equality impact assessment process required thereunder was designed to identify and address the potential for indirect discrimination in the operation of policies and practices operated by the Force. Instead, we believe that this original purpose has been lost under a tsunami of data from which no conclusions can be, or are, drawn by the Force to support change to improve equality in their practices and arrangements.

Further, we consider that there is little objective scrutiny of, or challenge to, the Force's practices and arrangements by the Scottish Police Authority (SPA). Instead the SPA frequently takes the lead on matters of equality, such as the publication of a "Smarter Working Handbook" that appears then to sit outside the management structure of the Force.

Middle and senior managers have had no training in the equality legislation, so tend to make moral judgements based on their perception of "fairness" in matters such as flexible working and the provision of reasonable adjustments. Too frequently we have had to support cases to Employment Tribunal to get a proper assessment of the Force's procedures under the law.

In respect of the Scottish Government's proposals we would therefore comment:

Proposal 1: Creating a more cohesive regime and reducing perceived bureaucracy

Question 1.1: What are your views on the proposal outlined above in relation to the substance of reporting?

Question 1.2: What are your views on the proposal outlined above in relation to the reporting process?

Question 1.3: What are your views on consolidating the previous sets of amending regulations?

We are generally supportive of the proposals to simplify the regime and have just one reporting cycle for all the duties. However, we believe that more clarity and guidance has to be provided to listed authorities, and their oversight bodies specifically to Police Scotland and the SPA, to ensure that meaningful information is included in reports.

For example, we believe that women police officers have a substantially shorter career in Police Scotland than men, yet Police Scotland cannot provide data on the average length of service of male and female leavers. Instead they produce data on the average length of service of incumbents. This provides no useful information other than a comment on the Force's recruitment at various times in the past.

Proposal 2: Embedding Inclusive Communications

Question 2.1: What are your views on our proposal to place a duty on listed authorities to embed inclusive communication proportionately across their work?

We believe that it is important that the Police Service co-ordinates with other public sector bodies to understand and map where areas of deprivation overlap and where particular protected groups of people are put at a disadvantage. This data should be used to focus action and bring about real change for people from disadvantaged protected groups.

We also believe that for the police to properly engage with the communities they serve, they need to engage with community policing. Unfortunately, community policing is no longer a feature of policing in Scotland. We believe that this will inevitably have a negative impact on the Force's ability to fully engage with communities under the government's proposals.

Proposal 3: Extending pay gap reporting to include ethnicity and disability

Question 3.1: What are your views on our proposal to require listed authorities to publish ethnicity and disability pay gap information?

Question 3.2: Should the reporting threshold for ethnicity and disability pay gap reporting be the same as the current reporting threshold for gender pay gap reporting (where a listed authority has at least 20 employees)?

Question 3.3: What are your views on the respective formulas that should be used to calculate listed authorities' gender, ethnicity and disability pay gaps?

From 2016, until the pandemic prevented our meetings, we have sought to work within the PNB Equalities Group to agree a gender equal pay report for Police Scotland with the Official Side. Differences in data collection and calculation has prevented this from happening. We believe that publishing one figure for “the pay gap” encourages employers to obscure rather than identify areas of concern.

We draw a distinction between publishing “an equal pay gap” figure and producing “an equal pay audit”. We have serious concerns that the requirement to publish a single figure has mitigated against a proper understanding of the systemic differences in pay between men and women. We believe that the focus is on reducing the pay gap figure by any statistical means.

For example, overtime is an inherent feature of the working arrangements and pay of Constables and Sergeants. Constables and Sergeants make up over 80% of all police officers. Police Regulations requires that police officers stay at work and/or come into work when they are not rostered for duty. Overtime is used for routine extensions of duty and is not an exceptional event as in other employment sectors. We agreed at the PNB Equalities Group that this would mean that overtime was included in the gender pay gap report, albeit that this is contrary to EHCR guidance. However, Police Scotland merely reports the gender pay gap without overtime, thus distorting the reality of the gap. Police Scotland analysis showed that the gender pay gap for Constables in respect of overtime was around 15% in 2019; for Sergeants it was 22%. Police Scotland reported a basic hourly rate pay gap for all officer of 3.2% over the same period.

We believe that to get a true understanding of the pay gap overtime payments should be included in the gender pay gap analysis. We believe that a more rigorous gender equal pay audit is required to establish the horizontal and vertical differences in pay across the organisation. We would urge a more comprehensive gender pay audit is required for employers over a certain size, including Police Scotland.

We believe that the requirement to publish gender equal pay and mainstreaming reports has led Police Scotland to adopt a defensive and self-congratulatory approach to equality.

The “league table” that is a feature of the media coverage of the pay gap figures across the public sector means that organisations are at pains to make their pay gap as small as possible. This mitigates against a proper understanding of the pay gap, its reasons and any actions required to reduce it. EHRC guidance that indicates that a less than 5% pay gap does not require further investigation or action means that any pay gap has to be lower than 5% by any statistical means. This has become an end in itself rather than a means to address inequality between men and women.

To extend pay gap reporting to ethnicity and disability, whilst on the face of it would be advantageous, would, we believe merely exacerbate the problems already apparent in the gender pay gap reporting process.

This would be made even more problematic by the lack of comprehensive data in respect of ethnicity, and particularly, disability. Many officers choose not to declare a disability for fear that they will be discriminated against.

Proposal 4: Assessing and reviewing policies and practices

Question 4.1: What are your views on the proposal outlined above?

Question 4.2: The Scottish Government recognises that improving the regime around assessing and reviewing policies and practices will take more than regulatory change. How else could improvements be made?

Question 4.2: What are your views on the current scope of policies that should be assessed and reviewed under regulation 5?

We recognise that the Force expends considerable resources in the construction of their mainstreaming reports, their equality impact assessments (known as Equality and Human Rights Impact Assessments (EqHRIs)) and their gender pay gap figure. However, there is actually very little information in these documents that could be said to further the understanding of equality in the Force or that could be used to develop a programme of action to promote equality of opportunity.

The Force's EqHRIs are littered with statements that policies and procedures are "justified" without any reference to what the legislation requires in this regard. There are promises to "consider" and "mitigate" any issues that might arise in respect of individuals. "Reasonable adjustments" are proposed for persons with characteristics other than disability. There does not seem to be any understanding of addressing fundamental problems by means of changing potentially discriminatory policies.

This cannot be how the PSED is supposed to operate.

We believe that a major stumbling block is the lack of understanding of the equality legislation at all levels in the Force. We note in this regard the case of *Mair v the Chief Constable of the Police Service of Scotland* 2017 (a case, supported by the SPF, where the applicant, a woman officer with childcare needs, was denied a flexible working arrangement). In that case the Employment Judge noted:

"the Tribunal were struck by the fact that both CI (X) and SI (Y)¹ appeared to focus on the business needs of the respondent to the exclusion of the discriminatory impact on

the claimant. This may well be explained by the fact that the SOP appears to have been designed to meet the requirements of the Flexible Working Regulations where the test for justifying refusal is different from the test for justifying indirect sex discrimination. It is clear from the caselaw discussed above that the approach requires an objective balance to be struck between the discriminatory effect of the condition and the reasonable needs of the party who applies the condition, SI (Y)'s comment that he was "fairly surprised that she resigned at the end of the process" indicates that he failed to appreciate the significance of the discriminatory impact of his decision on the claimant. Further he appears to have been influenced (as was CI (X) although perhaps to a lesser extent) by the need to be "fair" to other staff. However, the rationale behind outlawing unjustifiable indirect discrimination is precisely to address the particular disadvantage suffered by the affected group."

We believe it is important to understand the indirect discrimination provisions of the Equality Act in order to properly complete an equality impact assessment.

Although now over 4 years since this case, we are still not aware of any meaningful training that has been provided to managers within Police Scotland. Face to face training in the requirements of the Equality Act should be a requirement under the new SSD regime.

Proposal 5: A new equality outcome setting process

Question 5.1: What are your views on our proposal for the Scottish Government to set national equality outcomes, which listed authorities could adopt to meet their own equality outcome setting duty?

We are supportive of the proposal that there is a national focus on equality to which listed authorities must contribute. We recognise the limitations of the current system outlined in the EHRC's research in respect of Police Scotland's outcomes which are generally aspirational rather than SMART (specific, measurable, achievable, relevant) targets to be set within an identified time scale.

We consider that a greater involvement of parties outwith the Force would benefit the development of appropriate equality outcomes. We consider that the Scottish Police Authority should be more active in setting SMART objective for the Force and scrutinising their performance.

We also consider that the Force should take the expert knowledge of the Scottish Police Federation into account when setting SMART internal equality objectives for its workforce. As the statutory body charged with representing the interests of all police officers up to and including the rank of Chief Inspector, the Scottish Police Federation is best placed to understand the challenges facing all its members and the disadvantages experienced by members from all protected groups.

¹ We have anonymised the named officers.

Proposal 6: Improving duties relating to Scottish Ministers

Question 6.1: What are your views on the Scottish Government's proposal to simplify the regulation 6A process?

Question 6.2: What are your views on the proposal in relation to regulations 11&12?

Question 6.3: In 2019, the First Minister's National Advisory Council on Women and Girls recommended that Scottish Ministers deliver an Annual Statement, followed by a debate, on Gender Policy Coherence to the Scottish Parliament. In our response to this we said we would: "Consider the merits of aligning the delivery of a statement and debate with the existing legal duty on Scottish Ministers to publish a report on progress to better perform the PSED under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012". What are your views on this?

Regulations 6A, 11 and 12 relate more especially in a policing context to the Scottish Police Authority, The Scottish Police Federation has no comment on the proposals in regard to questions 6.1 and 6.2.

In regard to question 6.3 the Scottish Police Federation considers that Police Scotland has a fundamental role to play in improving equality for women and girls in society and in employment within the Force itself. However, we recognise that support to do this is required from other public bodies and it would be advantageous to have the government direct this support to make a real and lasting impact on women and girl's experience in the criminal justice system.

Proposal 7: Procurement

Question 7.1: What are your views on our proposal and call for views in relation to procurement?

No comment.

8. Intersectional and disaggregated data analysis

Question 8.1: The First Minister's National Advisory Council on Women and Girls called for the Scottish Government to place an additional duty on listed authorities to "gather and use intersectional data, including employment and service-user data, to advance equality between protected groups, including men and women"?

(a) What are your views on this?

(b) How could listed authorities be supported to meet this requirement?

As can be seen from our comments in respect of Proposal 3, we are very supportive of requiring a more granular approach to data collection. In particular the current requirement to provide one figure that represents "the gender pay gap" is neither useful nor appropriate. We consider that the current

requirements for data collection has become an end in itself; it does not encourage the use of data as evidence for policy development.

Question 8.2: [Question directed specifically to listed authorities]

(a) If there was a requirement for your organisation to “gather and use intersectional data, including employment and service-user data, to advance equality between protected groups, including men and women”, would you be confident your organisation could comply with it? YES/NO

Routing depending on answer to part (a). (b) If yes, why?

(b) If no, what would you need to ensure you could comply by 2025?

No comment as this question is directed at listed authorities.

9. Intersectional gender budget analysis

Question 9.1: The First Minister’s National Advisory Council on Women and Girls’ called for the Scottish Government to integrate intersectional gender budget analysis into the Scottish Budget process, and to place this on a statutory footing. What are your views on this?

Question 9.2: The First Minister’s National Advisory Council on Women and Girls’ called for the Scottish Government to place an additional duty on listed authorities to integrate intersectional gender budget analysis into their budget setting procedures.

(a) What are your views on this?

(b) How could listed authorities be supported to meet this requirement?

We recognise that women face a lifecycle of inequality compared to men largely because of their real or perceived caring role in society. Women are more likely to take time out from working outside the home and are more likely to work part time than men. Their experience of crime and the criminal justice system is different to that of men. In order to address this inequality – which we believe would benefit men as well as women – we consider that it would focus and support change to equality assess all budget proposals for gender impact. We do however have significant concerns that without practical guidance this would be impossible to deliver.

Question 9.3: [Question directed to listed authorities]

(a) If an additional duty was placed on your organisation to integrate intersectional gender budget analysis into its budget setting procedures, would you be confident your organisation could comply with it? YES/NO

Routing depending on answer to part (a). (b) If yes, why?

(b) If no, what would you need to ensure you could comply by 2025?

No comment as this question is directed at listed authorities.

10. Coverage

Question 10.1: (a) In your view, are there any Scottish public authorities who are not subject to the PSED or the SSDs that you think should be? YES/NO

(b) If YES, please give detail on which Scottish public authorities you think should be subject to the PSED or SSDs.

No comment

Question 10.2: EHRC has expressed the view that regulatory bodies, as part of their own compliance with the SSDs, should be encouraged to do more to improve PSED performance within their sector. What are your views on this?

In line with our response to question 5.1, we consider that there should be more scrutiny of compliance by oversight bodies. Objectives need to be SMART

11. Strengthening leadership and accountability and enhancing capability, capacity and culture

Question 11.1: The Scottish Government will consult on the issues in this section further through the mainstreaming strategy. However, if you think any of these matters could be addressed through the PSED review, please give details here.

12. Guidance

Question 12: What would you like to see in improved revised guidance for the SSDs?

We have taken questions 11.1 and 12 together as our view is that comprehensive training on the provisions of the Equality Act 2010 is the key to delivering on the public sector equality duty. The Equality Act underpins the public sector equality duty. Too often we believe the Force approaches the specific duties requirements as an end in themselves rather than being a mechanism to assess compliance with the law. We believe that paper and electronic guidance and advice can only go so far and that larger public sector bodies should be required to provide face to face equality training for managers at middle and senior level.

We also consider that policy writers are not best placed to critique the equality impact of their policies. We would support the proposal to identify a postholder within Police Scotland who is an "equality accountable officer" to provide "internal advice, guidance and competence building". However, we believe there is a danger that this would become a self-serving role and would need the support of "critical friends" from inside and outside their organisations to question their assumptions and drive change. We would support a system of "peer review" of listed authorities by other similar listed authorities against targets and guidance produced by the government.

13. Positive action

Question 13: EHRC has expressed the view that listed authorities should report on how they have used positive action under section 158 of the Equality Act 2010, as part of their reporting obligations.

What are your views on this?

No comment.

14. Overall reflections

Overall, we wish to highlight again our concerns relative to the lack of training PSoS provides for supervisors.



CALUM STEELE
General Secretary