

DEVELOPING A HUMAN RIGHTS FRAMEWORK FOR POLICE SCOTLAND

POLICE SCOTLAND HUMAN RIGHTS BASELINE ASSESSMENT

BACKGROUND

1. Police Scotland has made a commitment to embed a human rights based approach (HRBA) across policing in Scotland. A HRBA is a conceptual framework directed towards promoting and protecting human rights, based on international and domestic legal standards.¹ It means putting human rights and corresponding obligations of the police at the centre of policing practice, decision-making and organisational delivery to ensure that the human rights of all people coming into contact with the police, or affected by policing activities, are respected and protected.
2. In July 2022, I was asked to advise Police Scotland on the development of a human rights framework for policing across Scotland. I proposed a four-step process for developing a human rights framework:
 - Step 1: Baseline assessment of Police Scotland's current organisational and operational approach to human rights
 - Step 2: Designing and implementing a human rights framework
 - Step 3: Building organisational capacity in human rights
 - Step 4: Monitoring human rights compliance
3. Between January and April 2023, I conducted the human rights baseline assessment. The assessment was designed to identify organisational strengths, where Police Scotland is already effectively integrating human rights into policing activities, and weaknesses or gaps, where further work needs to be done. The findings of the baseline assessment will directly inform the development of the human rights framework for Police Scotland.

METHODOLOGY OF BASELINE ASSESSMENT

4. The Terms of Reference of the Baseline Assessment are attached at Appendix 1. The Baseline was designed to be a diagnostic evaluation comprised of three core elements examining the following:
 - a. Police Scotland's current organisational approach to human rights.
 - b. Perceptions of Police Scotland's commitment to human rights.
 - c. How Police Scotland responds to adverse human rights impacts.

¹ A human rights based approach is underpinned by the following five principles: participation; accountability; non-discrimination; empowerment; and legality (the PANEL principles).

A. How Police Scotland currently approaches human rights

5. The first element of the baseline assessment examined how Police Scotland currently integrates human rights, both organisationally and operationally, into day-to-day policing activities. It considered the following:
 - Level of organisational knowledge/ application of human rights.
 - The role of human rights in organisational and operational decision-making.
 - How human rights are integrated into Police Scotland training and policies.
 - The role of human rights in promotion and disciplinary processes.
 - Factors impeding a human rights based approach to policing.

B. Organisational and public perceptions

6. The second element of the baseline assessment examined organisational and public perceptions of Police Scotland's commitment to human rights in order to identify how human rights are prioritised and communicated, both internally and externally.

C. How Police Scotland responds to adverse human rights impacts

7. The third element of the baseline assessment examined the processes Police Scotland has in place to respond to adverse human rights impacts or violations it causes, considering:
 - Police Scotland's approach to assessing actual and potential adverse human rights impacts in day to day policing activities.
 - How Police Scotland responds to internal and external findings of adverse human rights impacts and/or violations and changes made to organisational culture as a result.
8. The baseline assessment incorporated the following research methods:
 - A comprehensive documentary and literature review
 - Qualitative interviews with Police Scotland executive team, senior officers and staff
 - Observation of Police Scotland strategic level boards
 - An online survey of police officers and staff²
 - A series of focus groups with police officers
 - Qualitative interviews with key external stakeholders

A full list of interviewees and focus group participants is set out at Appendix 2.

² The survey was shared through the Intranet and line manager emails. A total of 113 responses were received. Due to the short timescales, it was not possible to further boost the number of responses. It is important to note that this survey was likely to attract police staff with a pre-existing interest in human rights and is therefore not a fully representative sample. Nevertheless, the analysis of the survey responses captured some interesting initial insights.

9. Whilst the Baseline Assessment was designed to be a diagnostic evaluation and no benchmarking or comparisons have been conducted against other forces, policing reviews, inspections and inquiry reports from across the UK have been used to identify potential weaknesses in current policing processes and operational responses and inform the recommendations made in this report.
10. I would like to thank Police Scotland for its openness and transparency as I have conducted the Human Rights Baseline Assessment. I was given unrestricted access to documents and Police Scotland officers and staff as part of the assessment. No request by me for information has been refused, nor was any limitation placed on my ability to observe or attend relevant internal meetings. I am particularly grateful to ACC Mairs; Inspector Adam Johnstone and Sergeants Amanda McBride and Ailie Gordon, Equality Diversity Inclusion Secretariat; and Kevin Ditcham and Davina Fereday, Strategy, Insight and Engagements team for facilitating and supporting my work.
11. This report sets out my findings of the Human Rights Baseline Assessment and makes a series of recommendations to support the development of a human rights framework for Police Scotland under the following nine areas:
 1. The Relationship between human rights, professional standards and Police Scotland's Code of Ethics
 2. Police Scotland organisational approach to human rights
 3. Police Scotland organisational knowledge and application of human rights
 4. Integration of human rights in Police Scotland Training and Development
 5. Integration of human rights in Police Scotland Strategies and Policies
 6. Integration of human rights at operational level
 7. Human rights of Police Scotland people
 8. Accountability: Police Scotland response to external scrutiny and oversight
 9. Future proofing Police Scotland's human rights framework

1. THE RELATIONSHIP BETWEEN HUMAN RIGHTS, PROFESSIONAL STANDARDS AND POLICE SCOTLAND'S CODE OF ETHICS

“The model of policing by consent reflects a belief in an ethical model of policing. Police officers serve as members of the public in uniform and they exercise powers with the consent, approval, support and willing cooperation of other members of the public... Consent is not unconditional. It relies on the police operating with integrity and with accountability”³

10. As part of the baseline assessment, I have considered the relationship between human rights, professional standards and Police Scotland's Code of Ethics, and their respective roles in supporting an ethical model of policing.
11. The Police Scotland oath of office requires all officers to *“faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, and... uphold fundamental human rights and accord equal respect to all people, according to law.”⁴*
12. The Code of Ethics sets out the values of Police Scotland: integrity, fairness, respect and the commitment to uphold human rights. The Code outlines the principles and standards of behaviour that are intended to govern the conduct of all police personnel, officers and staff. The Code of Ethics sits at the centre of Police Scotland's Competency and Values Framework.
13. Professional standards of policing are managed through both performance⁵ and conduct⁶ regulations designed to deal with poor performance or behaviour which falls below the minimum expected of officers and staff.⁷ Whilst professional standards therefore seek to address unethical behaviour, they do not *in themselves* promote ethical behaviour: “[t]he reason is that such rules can only stipulate minimum standards, which if an officer falls below will merit his or her punishment.”⁸ A focus on promoting ethical policing therefore requires additional principles to supplement and build on these minimum professional standards of police conduct.
14. Human rights and equality principles and standards provide distinct legal frameworks for the exercise of police powers and police decision-making. They also have the potential to play a critical role in shaping ethical policing by providing the foundation for Police Scotland's Code of Ethics as the primary mechanism for promoting positive, ethical behaviour across Police Scotland.

³ Baroness Casey Review, *Final Report, An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service*, March 2023 (Casey Report), p.52.

⁴ Police and Fire Reform (Scotland) Act 2012, s.10(1).

⁵ The Police Service of Scotland (Performance) Regulations 2014, SSI 2014/67.

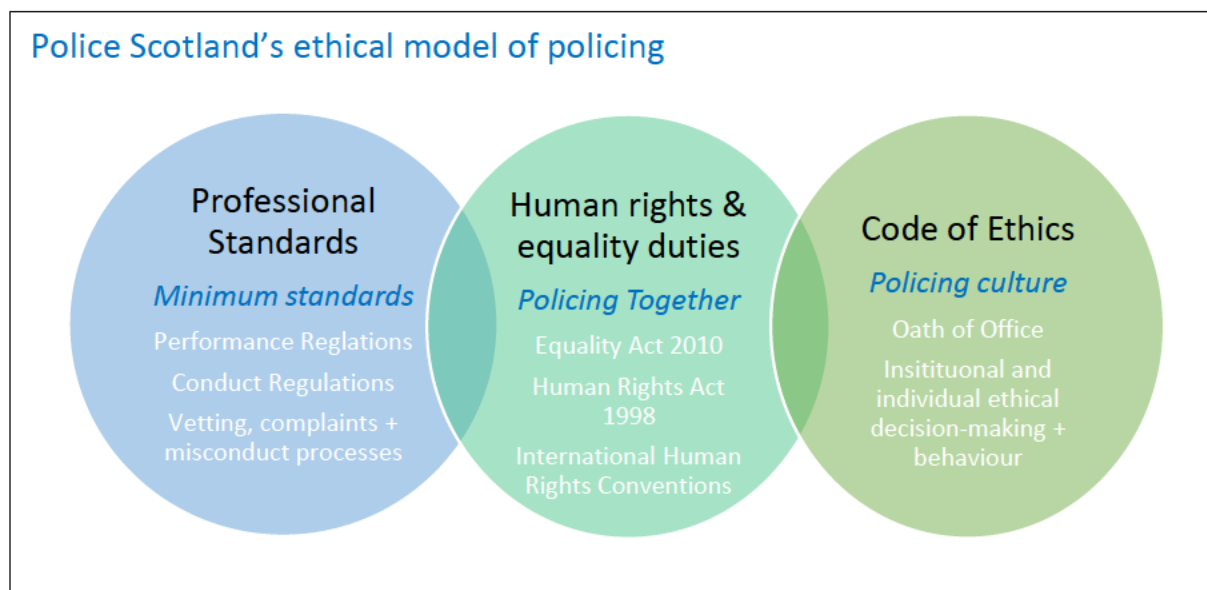
⁶ The Police Service of Scotland (Conduct) Regulations 2014, SSI 2014/68.

⁷ Schedule 1 of the Police Service of Scotland (Conduct) Regulations 2014 defines Police Scotland's Standards of Professional Behaviour. It is a legal obligation of officers to abide by these standards

⁸ P.A.J. Waddington, *Introduction* in Waddington, Kleinig and Wright (eds) *Professional Police Practice, Scenarios and Dilemmas* (2013) referenced in Dominic Wood, *Towards Ethical Policing* (2020), p.17.

15. The diagram below demonstrates the interrelationship between professional standards, human rights and the Code of Ethics as constituent elements of an ethical model of policing.

Diagram 1: Constituent elements of an ethical model of policing



Police Scotland Code of Ethics

16. The Police and Fire Reform (Scotland) Act 2012 makes no provision for a code of ethics for the Scottish Police Service. Nevertheless, Police Scotland has developed a Code of Ethics which explicitly references police officers' human rights obligations. In her independent report on police complaints handling, investigations and misconduct issues,⁹ Dame Elish Angiolini commended the non-statutory Code of Ethics and its commitment to respect for human rights. She recommended that the Police Scotland Code of Ethics should be incorporated into law, in line with England and Wales, Northern Ireland and the Republic of Ireland which each has in place a statutory Code of Ethics for policing.
17. Officers have mixed views on the role and value of the Police Scotland Code of Ethics. During focus group discussions, officers indicated a general level of awareness of the Code of Ethics. Many acknowledged the value of the Code in helping to define and shape ethical policing and a number of officers referred to the Code as setting out key principles on which to base decision-making, noting its centrality in Police Scotland's national decision-making model.
18. Other officers were less positive, commenting that in its current form, the Code of Ethics was only referenced 'to finger point' and 'used as a justification piece for the Executive in relation to how members of Police Scotland should act'. Frontline officers suggested that many officers

⁹ Dame Elish Angiolini, *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing: Final Report*, November 2020 (Angiolini Report).

‘do not understand what the Code of Ethics means and how to use it properly’ and that ‘it is largely ignored.’

19. The majority of officers taking part in the focus groups agreed that that the Code of Ethics needed to be more effectively embedded as ‘the way we police and how we behave as a person’, guiding behaviour both externally and internally. One suggestion made to embed the Code of Ethics and Police Scotland values was for Police Scotland to introduce an annual face-to-face ‘*Values and Standards*’ talk.
20. Further work is needed to embed Police Scotland’s Code of Ethics as a framework of ethical standards for delivering professional and effective policing that maintains the confidence and support of communities across Scotland. The Code of Ethics should have the dual objective of laying down standards of conduct and practice for police officers *and* making officers aware of their rights and obligations under human rights and equality legislation.¹⁰
21. The standards of the Code should apply to relationships between police officers and the general public; police officers and other professionals in the criminal justice system; individual police officers and their colleagues; and individual police officers and Police Scotland. Performance, grievance and disciplinary processes should integrate and reflect the standards of the Code. This would be a significant step towards embedding a human rights based approach to police conduct.
22. Having underlined the importance of the Code of Ethics as a framework for ethical policing, it is important to recognise that the Code will be totally ineffective if it is not embraced and understood by all police personnel. To address the perceived disconnect officers identified between messaging and application of the Code of Ethics by senior leaders, Police Scotland should be proactive in reinforcing the Code and ensuring officers and staff understand the standards of behaviour expected of them.

Recommendations

1. Police Scotland should consider placing the Code of Ethics on a statutory footing to entrench it as a framework for ethical policing across Scotland. Police Scotland should revise the Code of Ethics to base it more explicitly on human rights and equality standards.
2. Police Scotland should introduce an annual face-to-face ‘*Values and Standards*’ talk across all its local divisions where senior managers talk to frontline officers about Police Scotland values, human rights and ethical policing and frontline officers have the opportunity to hold senior managers to account for upholding the standards of the Code of Ethics.

¹⁰ The Human Rights Act 1998, the European Convention on Human Rights (ECHR) and the Equality Act 2010.

2. POLICE SCOTLAND ORGANISATIONAL APPROACH TO HUMAN RIGHTS

“Human rights are fundamental to the principle and purpose of policing. Good policing is human rights in action.” (Code of Ethics, Human Rights)

23. The culture and ethos of an organisation include both the way it acts, communicates and operates internally and the manner in which it represents itself and interacts externally, with those who use its service, other stakeholders and the wider public. The *internal culture* of a police service – how the service treats its own people – and the *external face* of a police service – how it interacts with different communities which it serves – are inextricably linked. The promotion of human rights awareness of Police Scotland officers and staff at all levels is therefore important not only to facilitate the development of a tangible human rights culture within Police Scotland but also to demonstrate Police Scotland’s commitment to a human rights based approach to policing across Scotland.
24. There is widespread consensus amongst the senior executive team that human rights are important to Police Scotland and there is a strong commitment to embedding a human rights based approach to policing driven from the top.¹¹ Several members of the executive team noted that it was particularly important that Police Scotland was developing a human rights framework in the current context given the crisis in trust and confidence in policing across the UK. They noted that ‘the core role of the police is to uphold and protect people’s rights’ and Police Scotland needs to be able to demonstrate this clearly and explicitly. This was perceived as central to police legitimacy.
25. Members of the executive team also acknowledge that in certain contexts, the perception of human rights is more defensive, for example, when serious mistakes are made by Police Scotland and human rights form part of the criticism of the service. It was recognised that this can make officers more wary of human rights.
26. 93% of respondents to the human rights survey agreed or strongly agreed that Police Scotland’s commitment to human rights is important, given the powers of the police and the potential to breach human rights in the course of police operational activities. Taking a rights based approach to policing was considered fundamental and should be at the heart of what Police Scotland does.
27. Survey respondents identified the following key challenges to the adoption of a human rights based approach to policing:
 - **Protecting the rights of victims and witnesses:** respondents felt that whilst there is sufficient policy and procedures in relation to the rights of suspects, there is a lack of guidance for upholding the rights of victims and witnesses in the criminal justice system.
 - **Lack of resources:** the pace and demand on frontline officers places can place pressure on effectively respecting and protecting human rights. For example, lack of custody staff

¹¹ Several members of the team commented that the Chief Constable embodies the values of the organisation and places human rights at the centre of policing in Scotland.

results in suspects being held longer than necessary; demands on response officers results in delays in responding to reports of crime and protecting victims.

- **Insufficient refresher training:** following initial training, there is a lack of refresher training to develop and embed understanding of core policing subjects. Respondents also highlighted the lack of dedicated time to facilitate continuous professional development and self-learning.
- **Discrimination and bias:** respondents noted the challenge when a minority of officers do not uphold human rights through discriminatory behaviours and attitudes, referencing the findings of Police Scotland's internal engagement work around tackling sexism and misogyny and the *Rhona Malone* employment tribunal case.

28. Officers of all ranks (from the executive team to police constables) considered that whilst the values of Police Scotland are well embedded across the organisation, human rights felt more like 'an add on' or 'bolt on' which needed to 'be taken from stage left into centre ground'. There was general agreement that that whilst a human rights based approach to policing is talked about at a strategic level, Police Scotland has more of a two dimensional approach to human rights and 'the theory on paper does not always translate into practice'.
29. A human rights based approach (HRBA) is underpinned by five principles: participation; accountability; non-discrimination and equality; empowerment; and legality (the PANEL principles). It has the twin goals of empowering people, through knowledge of their rights and participation in the development of policies and practices which impact them, and strengthening the capacity of those with legal obligations to respect, protect and fulfil human rights.
30. A HRBA to policing both defines the relationship between individuals and the police and involves the systematic embedding and implementation of human rights law and standards in police strategy, policy and practice.¹² To be a truly human rights based organisation, organisational and operational decision-making needs to be informed by human rights at a conscious level, with officers having a clear understanding of their legal obligations to respect and protect rights and the application of human rights standards in different policing contexts.
31. A number of Police Scotland strategic documents and policing plans talk about Police Scotland 'taking a human rights based approach to everything we do.' The Chief Constable is clear that the aspiration sitting behind the adoption of a HRBA to policing is for human rights to sit at the core of Police Scotland's purpose and function 'to ensure fairness, natural justice and the protection of those at risk of violence or harm, and to enable citizens to exercise their democratic rights'.
32. However, there is currently no common understanding or narrative of what a HRBA to policing means to Police Scotland as an organisation. Indeed, a number of interviewees commented that 'there is not a huge amount behind the comment *'we are a human rights based organisation'*'. Further, a number of interviewees said they were not sure that as an

¹² Scottish Human Rights Commission, [Human Rights Based Policing](#).

organisation, Police Scotland is clear about the distinction between human rights and equality, diversity and inclusion (EDI).

33. Senior level commitment to human rights is vital to embedding human rights organisationally. A clear and positive narrative from the executive team, together with leadership action demonstrating how human rights fit with and reinforce other important corporate values and agendas, will support Police Scotland to move beyond a narrow conception of human rights focused on compliance towards a more active and dynamic human rights culture.
34. To support the development of a compelling vision and narrative, the Chair of the Scottish Human Rights Commission encouraged the executive team to consider the following question when they are defining what a human rights based approach to policing means: *What do they want to see done differently by Police Scotland through embedding a human rights based approach?*.
35. Two members of the executive team offered the following insightful definitions of a HRBA to policing:

"A HRBA to policing means delivering a fair and proportionate policing service that includes consultation, transparency and accountability in the delivery of that service."

"A HRBA to policing means that in everyday policies, structures and processes, there is a very evident human rights strand. We should be able to look at anything we do and see the human rights considerations behind it. Culturally, officers on the street dealing with an issue turn first to human rights principles, then criminal law and police powers, to inform their response."

Recommendation 3

The Police Scotland executive team should develop a common understanding and narrative of what a human rights based approach to policing means to Police Scotland. This should be delivered through a facilitated session with the full executive team and communicated both internally to officers and staff and externally to stakeholders and the wider public.

3. POLICE SCOTLAND ORGANISATIONAL KNOWLEDGE AND APPLICATION OF HUMAN RIGHTS

36. There was general consensus amongst the executive team, focus group participants and staff diversity associations that currently, the integration of human rights is bespoke to specific Police Scotland business areas rather than a primary foundation of how Police Scotland works and makes organisational and operational decisions on a day-to-day basis.
37. Police Scotland's response to COVID 19 was identified as an exemplar of a human rights centred emergency response and was widely identified as the 'most visible example of how Police Scotland is a human rights based organisation.' However, it was widely acknowledged by members of the executive team that human rights issues are not discussed by the executive team as a standard and integral part of Senior Leadership Board (SLB) items and the standard

template for SLB papers does not include a specific section on human rights requiring focused consideration of human rights engaged and action taken in mitigation. It was agreed that there should be more conscious inclusion of human rights considerations in papers and discussions at SLB level.

38. It was generally agreed that human rights are well integrated and applied in policy and planning processes in relation to public order, firearms and covert surveillance operations. In firearms and covert policing operations, there is a sophisticated understanding in relation to ECHR Article 2 in operational discussions relating to complex and nuanced operations. Senior leaders employ the human rights language of legality, proportionality and necessity in operational decisions and authorisations as a matter of standard practice. However, members of the executive team have commented that some improvement could be made to strengthen written rationales around legal authority/ human rights standards and justifications for any potential interference with human rights.
39. In relation to public order, human rights are explicitly considered by Events, Emergency and Resilience Planning in preparation and planning for larger events, with a specific section of planning documents and operational orders dedicated to consideration of human rights. Concepts such as balancing rights, legality and proportionality are well understood in this context.
40. It was recognised that officers in specialist roles (who will have had specialist training for the role) have a more developed appreciation of human rights principles and how these apply to the specific policing work they do. In contrast, there is less understanding and application of human rights principles in normal day-to-day policing activities, e.g. on patrol, pursuits, search and seizure of property, stop and search of individuals, arrest.
41. In public protection, it was recognised that whilst human rights standards (e.g. understanding the negative, positive and procedural obligations of the police under ECHR Articles 2, 3 and 8) may be less explicit, a rights based approach is demonstrated through the focus on 'seeing the person' rather than simply a criminal justice outcome. Specialist public protection officers, e.g. the Domestic Abuse Taskforce, take a trauma-informed person centred approach to their work. This is in contrast to response officers who – largely due to the level of demand they face and corresponding time pressure – are unable to deliver in the same way.
42. There was general agreement that the level of understanding of human rights amongst probationers and junior officers was basic. However, some members of the executive team referred to the statutory core purpose of Police Scotland – “to improve the safety and well-being of persons, localities and communities in Scotland”¹³ and under scored that this explicit focus on wellbeing and safety shapes how police officers, from probationers upwards, respond to and treat individuals with whom they come into contact. For this reason, some suggested that whilst officers may not explicitly reference or apply human rights standards as part of their decision-making, they ‘want to do the right thing’ and are ‘unconsciously competent’.

¹³ Police and Fire Reform (Scotland) Act 2012, s.32.

Others commented that organisational knowledge of human rights was ‘superficial’, ‘poor’ or ‘style over substance’, noting that ‘you can’t value something if you don’t understand it’.

Recommendations

4. Police Scotland should develop a stand-alone human rights training package to establish a base level of human rights understanding across the organisation, in the same way that it has developed a mandatory EDI training package. Training should be based around case studies relevant to core policing business and should be refreshed every year to reflect developments in human rights law and practice.
5. The standard templates for papers for Senior Leadership Board and all other Boards should be revised to include an explicit section on human rights which requires the author to identify the human rights engaged and provide a justification for any interference and action taken in mitigation.

4. INTEGRATION OF HUMAN RIGHTS IN POLICE SCOTLAND TRAINING AND DEVELOPMENT

43. Effective training in human rights principles and practice is a foundation stone to creating a human rights based approach to policing and fundamental to ensuring a human rights complaint police service. All police officers and staff should be trained in the principles and standards of human rights and the practical implications for policing.
44. Currently, delivery of training is fragmented across Police Scotland, with training budgets and staff split across multiple business areas including Learning, Development & Training (LD&T), Operational Support, People & Development and C3. LT&D is tasked to provide a level of quality assurance across all business areas.
45. As part of the Baseline Assessment, I reviewed an extensive range of Police Scotland training materials across a range of business areas, including the following:
 - human rights elements of the probationer training programme
 - EDI/ equality/ non-discrimination
 - operational safety training/ use of force
 - public order
 - custody officer training
 - public protection
 - domestic abuse
 - children
 - hate crime
 - rape and sexual offences
46. My review demonstrated that there is no consistent approach to the integration of human rights principles and standards across Police Scotland training products. Where human rights are referenced, these tend to be through lists of ECHR articles without explanation of the

scope and application of specific rights to particular policing activities. By way of example, I discuss Probationer and Operational Safety Training below.

47. I discussed the adequacy and suitability of human rights training during my interviews and focus groups with Police Scotland officers and staff. I highlight particular points raised during these discussions below.

Probationer training

48. Probationer training is key to instilling Police Scotland values and a human rights based approach to policing amongst new recruits. The probationer training lesson plans are cursory in their approach to human rights. The specific lesson plan on human rights provides a basic list of ECHR articles, with some articles given prominence and others largely ignored. Neither the structure of human rights (absolute, limited, qualified) nor key police obligations in relation to specific ECHR articles are explained. There appear to be no practical examples or case studies provided to recruits on how human rights apply to day-to-day policing activities. The focus of the training in terms of behaviour appears to be more on misconduct (what you cannot do) than on developing a positive policing culture by embedding standards of ethical behaviour through training on the Code of Ethics, human rights, and equality, diversity and inclusion.
49. During focus group discussions, Superintendents, Inspectors, Sergeants and Constables all agreed that human rights training in Probationer training is cursory and gives no sense of how policing and human rights relate to each other. As many officers will not receive any further training for upwards of 6 years (until they are promoted and attend the first line supervisor course), this results in a significant gap in junior officers' knowledge and understanding of human rights. Constables were critical that human rights training for response officers was limited to general references to ECHR Articles in the Operational Safety Training (OST) and references to ECHR Article 3 in custody training. Officers agreed that CPD courses which incorporated human rights refresher training and practical case studies would strengthen understanding and application of human rights across the organisation.

Operational Safety Training

50. Operational safety training comprises 19 modules. Module 1 on the use of force (UOF) includes a section on UOF legislation and a section on the Human Rights Act. The module is five pages in total. The section on UOF does not appear to explicitly set out the tests for the use of force. The section on human rights references Articles 2, 3 and 5. It is not clear whether during delivery of the training, an explanation is provided of how these obligations apply to police UOF or what legal obligations the police have under the articles. Other relevant human rights, such as Articles 8 and 14 are missing. Module 2 on conflict management contains one page again setting out a list of Convention rights. No further explanation is provided of the scope, relevance or application of the respective articles
51. Human rights need to be much more central to OST, which should also be much clearer on thresholds for the use of force. OST should also include training on negotiation and liaison, especially in relation to police response to vulnerable persons/ persons with mental health issues, so that response officers exhaust all possible non-UOF options before deploying force.

Integration of lived experience into training

52. Focus group participants advocated that Police Scotland should incorporate people with lived experience much more across its training modules. One officer referenced the benefit of hearing from a recovering drug addict as part of his training on naloxone and said this 'remoulded my way of thinking and the way of how I police'. There was agreement that Police Scotland should also recognise the lived experience of its own people, for example, in relation to its approach to equality, diversity and inclusion, and seek the views of officers and staff when developing strategies and action plans.

Personal learning: lack of dedicated time for training

53. During focus group discussions, officers were critical that there was no dedicated time for training, with the exception of the two days allocated to OST. There was consensus that the majority of packages on Moodle are far too long with officers commenting that when they are on shift, they do not have time to read lengthy Moodle packages of 40+ pages. Office facilities for response officers also create a physical impediment to use of Moodle: there is no quiet space or training room for officers to complete training packages. The 3 or 4 terminals which officers can access to complete Moodle training are in the main located in the 'report writing room' which is hugely busy and loud, with officers constantly on the telephone following up on cases. Everyone agreed that e-learning needs to be more interactive, and include short videos that officers can listen to on the go. It was noted that Moodle was very difficult, if not impossible, to use for officers who are neurodiverse.

Senior leadership training

54. A number of members of the executive team acknowledged there had been a dearth of senior leadership training and that Police Scotland has not invested sufficiently in its leaders in recent years. This is now being remedied through the roll out of a bespoke leadership development programme, *Your Leadership Matters*.
55. The Police Scotland leadership development programme, *Your Leadership Matters* (YLM), is the foundation for Police Scotland's wider leadership and management development programmes and is intended to be an enabler for Policing Together.¹⁴ YLM is intended to align with Police Scotland's Competency and Values Framework. The three leadership behaviours defined as part of the YLM programme are to lead and learn inclusively; have the courage to do the right thing; and collaborate for growth.
56. The delivery of YLM commenced on 17 April 2023 and will run until October 2024. The first stage of the programme focused on launch of the YLM for 250 Senior Leaders 'to share key messages and equip these leaders to act as role models and ambassadors for the programme'.¹⁵ The YLM core programme is divided into two cohorts. The first cohort comprises 515 mid-level leaders (Chief Inspectors and staff grades 8-10 with line management responsibility). The second cohort is made up of 5,000 first line leaders (Sergeants, Inspectors and staff grades 4-7 with line management responsibility).

¹⁴ Report by Katy Miller, Director of P&D, to PS Policing Together Strategic Oversight Board for approval before presentation to PS Senior Leadership Board on 10 May 2023 (YLM Report to SOB), p.3.

¹⁵ YLM Report to SOB, pp.3-4.

57. The outline of the YLM programme references Police Scotland values and explicitly includes consideration of diversity and inclusion as part of the learning outcomes of the YLM Leadership Behaviours. A key plank of the communications strategy around the YLM is ‘to demonstrate clearly that *Your Leadership Matters* is a crucial part of a wider programme of work across the organisation, to bring additional focus on our values of integrity, fairness, respect and a commitment to upholding human rights.’¹⁶ However, it is not clear whether the Police Scotland Code of Ethics and human rights considerations have been incorporated into the content of the programme.

Learning and development culture

58. Several members of the senior team suggested that Police Scotland needs to strengthen its learning and development culture. For example, currently no Police Scotland department or team has responsibility for reviewing and disseminating learning points coming out of external reports or inquiries relevant to policing, such as HMICFRS and HMICS reports; inquiry reports such as the Manchester Arena report; NPCC operational debriefs etc.

New Ten Year Learning and Development Strategy

59. The recently appointed Head of Learning, Training and Development (LTD) acknowledged that human rights do not currently form a sufficiently central part of the Police Scotland curriculum. He was candid in stating that he was unable to provide any assurance that human rights were integrated in Police Scotland training products or, where human rights were referenced, any assurance as to the standard or accuracy of the input.
60. LTD is currently developing a 10 year learning and development strategy across Police Scotland. It shared its draft strategy with me.¹⁷ The national strategy presents a 10 year vision for learning and development that reflects the changing focus of policing. It aims to equip Police Scotland officers and staff with the capabilities and skills required to ensure the effective and professional delivery of policing across Scotland. Values, ethics and human rights are included as one of the four core attributes of the strategy and the LTD team recognise the need to equip officers and staff with an understanding of the practical application of human rights standards to everyday policing activities.
61. LTD is in the process of establishing a working group to further develop the draft strategy and design the corresponding national delivery model which will identify the work streams and resources required for implementation.
62. Moving from Police Scotland’s current disparate model of training provision to a more unified, cohesive model directed by a national strategy overseen by LTD provides the opportunity for Police Scotland to integrate human rights across Police Scotland’s training provision. With this in mind, below I set out a number of short and longer term recommendations to embed human rights across police training.

¹⁶ YLM Report to SOB, p.27.

¹⁷ Police Scotland: *Learning and Development Strategy – A 10 Year Vision*, Draft Version 1.0.

Recommendations

6. Police Scotland should ensure that human rights standards and principles form a central part of the new Police Scotland learning and development strategy and training curriculum. Learning Training and Development should include an individual with human rights expertise on its strategy working group.
7. Police Scotland should recruit a human rights adviser to conduct an audit for LTD of key training programmes, including Probationer Training and OST, to ensure that the Code of Ethics and human rights principles and standards are effectively integrated and updates and developments in human rights law and practice incorporated. LTD should aim to complete the audit within the next 6 months.
8. Police Scotland Operational Safety Training (OST) should be reviewed and revised as a matter of priority. Human rights should be fully integrated across OST modules and thresholds for the use of force made clear. Training on negotiation and liaison, especially in relation to police response to vulnerable persons/ persons with mental health issues, should be incorporated so that response officers exhaust all possible non-UOF options before deploying force.
9. Police Scotland should ensure that its continuous professional development (CPD) curriculum is a vehicle for embedding Police Scotland values, including the Code of Ethics, human rights and EDI. Human rights should be integrated into all CPD courses.
10. Police Scotland should review the content of *Your Leadership Matters* to ensure that Code of Ethics and human rights considerations have been meaningfully incorporated into the content of the programme.
11. Police Scotland should include human rights as a core element of the 8-week Chief Superintendent Induction Programme.
12. Police Scotland should consider introducing human rights refresher training at senior officer level, with case studies applied to the core areas of PS business.
13. Police Scotland should establish a systematic process for reviewing important external report and inquiry findings, assessing policies, processes and practices in light of important findings and disseminating key learning points across the organisation.

5. INTEGRATION OF HUMAN RIGHTS IN POLICE SCOTLAND STRATEGIES AND POLICIES

63. It is fundamental that Police Scotland policies establish a framework for decision-making and conduct that is informed by and seeks to ensure compliance with human rights in all areas of policing business. As part of the human rights baseline assessment, I reviewed key Police Scotland strategies, policing plans and action plans; Police Scotland's EDI Framework and associated action plans; Police Scotland's equality and human rights impact assessment (EQHRIA) guidance and EQHRIA tool; and Police Scotland's draft employee engagement

toolkit. I also reviewed a wide range of Police Scotland policies related to the following areas of police work:

- victims and witnesses
- police use of force
- public order
- police use of new technologies
- data ethics
- covert policing
- public protection
- victims
- domestic abuse
- children and young people
- hate crime
- honour based abuse
- rape and sexual offences
- social media and criminal offences
- complaints and whistleblowing
- professional standards
- grievance procedure
- police use of social media

Analysis

64. My review demonstrated that there is no consistent approach to consideration and application of human rights principles and standards across Police Scotland's strategies and policies. In the majority of strategies and policies I reviewed, references to human rights were superficial. However, there are some recent examples of good practice which evidence a more developed approach to the application of human rights standards and principles. I discuss below a number of key Police Scotland strategies to demonstrate these varying approaches.
65. The Police Scotland People Strategy 2018-2021 makes no reference to human rights or adopting a human rights based approach to policing in its section on 'values'. The Public Contact and Engagement Strategy makes no reference to the human rights of victims or the Victims' Code for Scotland. The Annual Police Plan 2022/2023 only mentions human rights when referring to Police Scotland values and EQHRIAs. The eight human rights references are exactly the same as eight references included in the 2021/2022 Annual Police Plan.
66. The Digital, Data and ICT Strategy 2018¹⁸ makes only minimal reference to human rights. The Strategy was developed to "enable Police Scotland to develop an effective digital policing capability enabled by a highly efficient data and technology operating model." The six Design Principles¹⁹ articulated in the strategy make no reference to human rights or equality principles. This concerning in light of the sensitivity and complexity of this area of policing.

¹⁸ Police Scotland, *How will we use technology to improve policing in Scotland? Police Scotland Digital, Data and ICT Strategy*, April 2018.

¹⁹ Digital, Data and ICT Strategy 2018, p.15.

67. The more recent Police Scotland Cyber Strategy 2020²⁰ provides an example of good practice in relation to the integration of human rights. The four objectives of the strategy include ‘protecting and safeguarding those at most risk of harm’. The strategy sets out five enablers to support implementation. The first enabler listed is ‘Respecting Rights’ defined as ‘employing a rights-based approach that prioritises privacy and protection’²¹ and recognising the importance of the participation of the public, communities and business in the design of Police Scotland’s approach to cybercrime.²² The legal justification for the new approach to cyber states ‘we must ensure that human rights and privacy rights form the foundation of any work to adopt or adapt technology and software for policing purposes.’²³
68. The recently published Police Scotland Violence Against Women and Girls Strategy 2023 (VAWG Strategy) provides an example of good practice in relation to the adoption of a human rights based approach to strategy development. Although the strategy does not specifically reference Police Scotland’s obligations to protect women from violence under the Human Rights Act 1998²⁴ or the international legal framework for the protection of women from discrimination and violence,²⁵ the strategy is underpinned by the five PANEL principles.²⁶ Its development was informed by the direct participation of survivors, stakeholders and the wider public: “[w]e have been informed by my individuals’ lived experiences of abuse, engaging with survivors from different communities and backgrounds. We have worked closely with... key stakeholders across the public, private and third sectors, as well as engaging with academics”.²⁷ Police Scotland commits to adopting a person-centred approach²⁸ when responding to incidents of violence against women, involving affected communities in the design and delivery of Police Scotland’s services and ensuring survivors are supported and their experiences understood and heard.²⁹
69. Significantly, the strategy also recognises the work that Police Scotland itself must do to tackle discrimination and misogyny within its own culture: “[t]o develop the strategy we underwent a significant period of self-assessment and reflection, recognising that there are issues in our organisation and its culture that we must address in order to meet the needs of the people we serve and build trust and confidence in our ability to do so... Police Scotland has a zero tolerance for the individuals demonstrating discriminatory views or behaviours. Those people are not welcome in our organisation”.³⁰
70. I discussed how human rights and equality impacts are assessed as part of the development of Police Scotland strategies during my interviews and focus groups with Police Scotland officers and staff. Members of the executive team were candid that consideration of human

²⁰ Police Scotland, *Cyber Strategy 2020. Keeping people safe in the digital world* (Cyber Strategy).

²¹ Cyber Strategy, p.47.

²² Cyber Strategy, p.7.

²³ The case for change, p.15.

²⁴ Under ECHR Articles 2, 3, 8 and 14.

²⁵ UN Convention on the Elimination of All Forms of Discrimination against Women.

²⁶ Participation; accountability; non-discrimination and equality; empowerment; legality.

²⁷ Police Scotland Violence Against Women and Girls Strategy 2023 (VAWG Strategy), p.3.

²⁸ In line with the Scottish Government’s Vision for Justice Strategy.

²⁹ VAWG Strategy, pp.11-12.

³⁰ VAWG Strategy, pp.8-9.

rights is often not an explicit focus in the development of Police Scotland strategies. For example, human rights were not a formal consideration in the process for developing the Overarching Policing Strategy 2023-2026 and assessments of equality and human rights impacts were limited. And in Police Scotland's recent work on service redesign in response to budget cuts, there was no framework or methodology in place to conduct an assessment around equality and human rights impacts as a formative part of the process. The Terms of Reference in relation to Police Scotland's service redesign includes no specific reference to human rights and equality impacts.

71. The role of human rights and equality impact assessments in the design of Police Scotland policies is similar. Staff diversity associations have reported that Police Scotland frequently adopts a blanket approach to its development of new policies, without adequately considering the particular impacts on specific groups. They provided the following examples:
- the blanket ban on beards brought in during the pandemic (with officers failing to comply being placed on desk duties)
 - failing to mitigate reporting processes for neurodiverse³¹ officers
 - the acquisition of new mounted rescue kit which did not include provision of specialist clothing for female officers
 - lack of non-binary kit for officers, e.g. non-binary hats for formal occasions
 - failure to provide reasonable adjustment to officers on shift who were observing Ramadan (e.g. time for breaking fast; time for prayers).

Integrating human rights and equality considerations into strategy and policy design

72. Equality and Human Rights Impact Assessments (EQHRIA) have proven to be an important mechanism for building equality and human rights into the development of strategies, policies and practices across the public sector in Scotland. If properly used, EQHRIAs have the potential to enable human rights and equality considerations to be much more fully integrated Police Scotland strategies, policies, practices and priorities.
73. The domestic courts have made clear that the public sector equality duty (PSED³²) applies to the carrying out of any function of a public authority.³³ For example, a function may be the discharge of a statutory duty, the exercise of a discretion vested in it or the carrying out of a common law obligation.³⁴ This means that the general equality duty applies to decisions made by the police officers and staff in their day-to-day activities. Further, the courts have been clear that the PSED must be fulfilled *at the time when a particular policy is being considered*, i.e. at

³¹ Neurodivergent workers are likely to meet the legal definition of disability under the Equality Act 2010. This means that they have rights to reasonable adjustments as well as protections against discrimination, harassment and victimisation. Neurodivergent conditions including attention deficit hyperactivity disorder (ADHD), autism, dyspraxia (condition affecting movement and co-ordination), dyslexia and dyscalculia (difficulty in understanding numbers) have all been recognised as disabilities under the Act.

³² Section 149(1) of the Equality Act 2010 sets out the public sector equality duty (PSED). The PSED requires public authorities, when exercising their functions, to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and those who do not.

³³ *Barnsley MBC v Norton* [2011] EWCA Civ 834, Lloyd LJ at para 15.

³⁴ *R (on the application of D and S) v Manchester City Council* [2012] EWHC 17 (Admin), Ryder J at para 48.

the beginning of the development of a strategy, policy or practice or a decision-making process. An assessment attempting to justify a decision as being consistent with the exercise of the duty when it was not, in fact, considered before the decision is not sufficient to discharge the duty. The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision. It is not a question of 'ticking boxes'.³⁵

74. The Police Scotland national guidance on EQHRIA is an important document. It is intended to support Police Scotland to meet its statutory duties under the Equality Act 2010, The Equality Act 2010 (Specific Duties) (Scotland) regulations 2012³⁶ and the Human Rights Act 1998. The guidance explains that the purpose of an EQHRIA is to conduct a structured and objective assessment of policies and practices to ensure the proactive consideration of equality and human rights principles. It makes clear that the value of an EQHRIA is diminished if it is not built into the design and development of new or reviewed policies, practices and procedures.
75. There is widespread agreement across Police Scotland that the EQHRIA process is not well used. A number of senior officers consider that the EQHRIA process is not seen as valuable. EQHRIAs are not completed consistently, with the consequence that strategies and policies are being developed without consideration of equality and human rights impacts. When EQHRIAs are completed, they tend not to inform strategy or policy development at the outset but rather to test a strategy or policy once it has been completed – 'the focus is on getting the thing done as opposed to investigating and assessing equality and human rights considerations first'. In addition, while a formal EQHRIA must be completed in relation to formulation of a *new* strategy or policy, there appears to be no procedure to insure that equality or human rights impacts will be considered as part of any revision or updating of policing policies or practices following, for example, an internal debrief. This may result in inconsistency and unintended negative consequences.

Lack of meaningful consultation

76. Staff diversity associations also reported that the consultation element around EQHRIAs tends to be completed late in the day, often it seems after the formal decision on the content of a policy has been made. One diversity association head commented, "Police Scotland often decides what the end dish looks like and the necessary ingredients and then engages with the staff diversity associations. But it's only receptive to feedback or responses if they won't spoil the already defined end dish." Consultees feel often like an after-thought, being 'consulted' about a new strategy sometimes only one week before the strategy is due to be presented to the Scottish Police Authority. All agreed that in reality, this means that consultees are unlikely to be able to influence or inform any substantive changes to the strategy as shared with them.
77. Against this background, I make a number of short and longer term recommendations.

³⁵ R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158.

³⁶ The PSED is supported by the specific duties contained in The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, as amended.

Recommendations

14. Police Scotland should integrate EQHRIAs as part of its corporate services redesign, change and transformation programmes to ensure human rights and equality standards are built in to the design and delivery of all Police Scotland services.
15. Police Scotland should develop bespoke EQHRIA for key business areas and policing activities with the objective of more fully integrating human rights and equality considerations in the development of all corporate strategies, business plans, organisational policies and procedures and national policing guidance.
16. Police Scotland departmental leaders should be responsible for completing EQHRIAs at the outset of strategy and policy development processes; ensuring that human rights principles are integrated into their strategies and policies; taking the necessary action to address and mitigate any identified negative human rights or equality impacts.
17. Police Scotland should set up a system to ensure that when an EQHRIA identifies potential negative human rights or equality impacts, these are monitored and the strategy, policy or practice reviewed after one year.
18. Police Scotland should review its approach to public and internal consultation to ensure more meaningful participation in the development of Police Scotland strategies, policies and practices.

6. INTEGRATION OF HUMAN RIGHTS AT OPERATIONAL LEVEL

78. Police operations to protect life, preserve order, prevent or investigate the commission of offences all have the potential to engage multiple human rights. It is therefore critical that Police Scotland has in place systems to ensure that the planning and execution of policing operations are lawful and human rights compliant and that operational officers commanding complex policing operations have access to relevant legal advice, guidance and support. I assess the integration of human rights at the operational level under the following headings:

- A. Police use of force
- B. Police use of restraint
- C. Public order
- D. Police use of digital technologies and biometrics
- E. Police use of data
- F. Police treatment of children
- G. Police access to operational human rights advice

A. POLICE USE OF FORCE

79. The use of force by the police is one of the most fundamental aspects of policing which raises human rights concerns. Police use of force is strictly regulated in domestic and international law. Police services must ensure that their policies and procedures provide clear and practical

guidance on the use of force and that police officers have the necessary training to understand the legal framework governing the use of force. The public must be confident that all allegations of improper use of force by the police are effectively investigated and the police held to account for any identified human rights violations. And police officers must have confidence that they will be supported when they act properly and they will be guaranteed a fair procedure in any investigation into allegations of improper use of force by them.

80. I reviewed Police Scotland's use of force policy as part of my policy review. The use of force policy is a very short document of five pages. It defines its purpose as establishing the criteria for the use of force by police officers for the purpose of conducting their duties. The only reference to human rights is the following confused statement:

"Human Rights Implications

The Human Rights Act 1998 confers a number of rights which will affect an individual who may require using some degree of force in the executive of their duty."

81. Police Scotland's use of force policy is inadequate. It does not properly explain thresholds for the use of force and provides no guidance on the human rights obligations of the police in relation the use of force or the requirement for an effective official investigation when an individual is killed as a result of the use of force and/or when it is arguable that there has been a breach of ECHR Article 2 or 3. The policy should be revised as a matter of urgency

Use of force policies: examples of good practice

82. The Police Service of Northern Ireland (PSNI) has developed a *Manual of Policy, Procedure and Guidance on Conflict Management*.³⁷ It is "the principal reference on which all applications of force are based. It will become an integral part of police response to situations of conflict and will provide a standard to be attained by all police officers both as individuals and in group tactical situations." The purpose of the manual is to facilitate an understanding and to provide practical guidance concerning the use of force by police officers. The manual and incorporated procedures and guidelines are intended "to support and inform operational performance, decision-making, planning and training in order to improve safety during normal patrolling or during the policing of violent or potentially violent situations".
83. The College of Policing Conflict Management Guidelines 2020³⁸ focus on how to resolve conflict in everyday encounters between the police and the public without using force, where possible. The guidelines aim to encourage safer resolution, reduce the risks of assault to officers and staff and improve public safety. They are designed to provide clear evidence-based guidance to forces on how to keep officers and staff safe, by helping them to resolve conflict without needing to use force, where possible. The aim of the guidance is to ensure that officers and staff are properly supported to develop their skills in the non-physical aspects of conflict management.

³⁷ Available [here](#).

³⁸ Available [here](#).

Recommendation 19

Police Scotland should review and revise its policy on the use of force as a matter of urgency. The policy should clearly define the relevant legal tests for the use of force and provide guidance on the human rights standards and principles relevant to police use of force, in particular the requirements of Article 2. The policy should comply with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials.

B. POLICE USE OF RESTRAINT

84. Police Scotland's use of restraint is currently under investigation in a case resulting in the death of a vulnerable person with mental health issues.³⁹ Police Scotland's executive team have highlighted concerns around the use of police restraint in two specific contexts:
- i. use of restraint when a vulnerable person is in police custody and a hospital intervention is required but not available
 - ii. use of restraint when police are requested by healthcare professionals to provide officers to guard or restrain a vulnerable person in a healthcare setting (e.g. a hospital) due to the risk posed to medical staff.
85. Officers are trained in the medical implications of using operational safety techniques as part of Police Scotland's Operational Safety Training.⁴⁰ The purpose of the module is 'to assist officers/staff to identify and minimise the dangers associated with operational safety techniques and attempt to eliminate unnecessary injury to both the subject and the officer/staff.'⁴¹ The module includes training on positional asphyxia and acute behavioural disturbance, highlighting causes, risk factors, and signs and symptoms. The module specifically addresses the restraint of a subject with acute behavioural disturbance and sets out specific guidance for officers who may be required to restrain subjects, either to protect the subject from injury and await medical assistance, or to protect the officer or the public from being injured.⁴²
86. Given the continuing (and likely long term pressure) on healthcare services with the likelihood that Police Scotland may receive further requests for assistance in relation to vulnerable persons with mental health issues in the contexts discussed above, Police Scotland should review its training and guidance on the use of restraint to ensure it fully integrates human rights principles and considers human rights and equality impacts.

³⁹ Joseph Sneddon, 37, a mental health patient was being treated in Victoria Hospital in Kirkcaldy when he died in April 2022. The family have stated that they were told he was restrained for up to four hours by six officers and two guards and have claimed he died after experiencing "brutal use of force" by police and security staff at a Fife hospital. There is an ongoing Crown Office investigation and a separate investigation being carried out by the Police Investigations and Review Commissioner.

⁴⁰ Module 4, *Medical Implications and Mental Health*.

⁴¹ Module 4, p.2.

⁴² Module 4, p.8.

Recommendation 20

Police Scotland should review and revise its training and guidance on the use of restraint to ensure it is accurate, up-to-date, applies relevant human rights principles and properly considers human rights and equality impacts.

C. PUBLIC ORDER

87. Protests, parades and assemblies are an important aspect of democratic society and police have legal obligations to respect and protect the exercise of the democratic rights to freedom of expression and assembly.
88. As part of the baseline assessment, I reviewed Police Scotland's 2019 Review of Policing Parades, Assemblies and Protests in Scotland;⁴³ Police Scotland COP26 internal debrief report⁴⁴ commissioned to provide an evidence-based review of the COP26 policing operation to support the development, planning and delivery of future public order operations; and Police Scotland's debrief report of the public order operation relating to *Just Stop Oil* protest activity in Scotland in May 2022.⁴⁵
89. Human rights are well integrated into public order policies and planning processes. ECHR Articles 8, 9, 10 and 11 and concepts such as balancing rights, legality and proportionality are explicitly articulated and well understood in this context.
90. I have considered how Police Scotland might further embed human rights into public order policing to support operational planning and decision-making. Currently, Police Scotland has no system in place for disseminating important protest or public order caselaw developments. It is important that these are brought to the attention of public order commanders to ensure that they are aware of any changes to the legal framework in which they are planning and commanding public order operations.

Recommendation 21

Police Scotland should establish a system for disseminating important caselaw developments to public order commanders. These should comprise a case summary setting out key legal principles and their operational relevance.

D. POLICE USE OF DIGITAL TECHNOLOGIES AND BIOMETRICS

91. Police use of digital technologies and biometrics is a key area of work for Police Scotland which raises profound human rights challenges and risks, most notably in relation to privacy rights. ECHR Article 8 encompasses the protection of a wide range of aspects of private life, which can be divided into three broad categories, namely: (i) a person's (general) privacy, (ii) a

⁴³ Police Scotland, Review of Policing Parades, Assemblies and Protests in Scotland, December 2019, p.5.

⁴⁴ Police Scotland, COP26 Debrief, Operational Urram Internal Debrief report

⁴⁵ Police Scotland, Operational Table Formal Debrief Report, 19 July 2022 .

person's physical, psychological and moral integrity and (iii) a person's identity and autonomy. Interference with Article 8 occurs most obviously when personal data is processed (for example, to identify or surveil individuals), but it can also occur without the processing of personal data. Examples of technology applications which impact Article 8 include systems that track the faces and other biometrical data of individuals. The case law of the European Court of Human Rights makes clear that the capture, storage and processing of such information, even briefly, impacts article 8.

92. The regulatory framework around the use of AI continues to develop. In December 2020, the Council of Europe's Ad hoc Committee on Artificial Intelligence published a Feasibility Study (the "Study") on Artificial Intelligence legal standards. The Study examines the feasibility and potential elements of a legal framework for the development and deployment of AI, based on the Council of Europe's human rights standards.⁴⁶ In November 2022, the Scottish Biometric Commissioner published the first Code of Practice governing the ethical use of biometric data,⁴⁷ setting out 12 guiding principles on the acquisition, retention, use and destruction of biometric data for criminal justice and policing purposes in Scotland. Police Scotland, the Scottish Police Authority and the Police Investigations and Review Commissioner must all adhere to the Code of Practice. And in March 2023, the UK Government published a White Paper, *A pro-innovation approach to AI regulation*.⁴⁸
93. Police Scotland aspires to utilise new technologies to provide a better service to the public. As part of the baseline assessment, I reviewed documents relating to the Policing in a Digital World Programme. Police Scotland is developing a '*Rights Based Pathway*' as a central component of the Programme to ensure robust compliance processes are in place in relation to the introduction of new technologies by Police Scotland and intends to use the Child Abuse Image Database (CAID) facial matching technology as a pilot to test the Rights Based Pathway.⁴⁹
94. I commend Police Scotland on its work to develop a rights based pathway in relation to its use of digital and biometric technologies, integrating human rights and ethical considerations and

⁴⁶ The Study concludes that there are gaps in the current level of human rights protections, including the need to ensure sufficient human control and oversight; the technical robustness of AI applications; and effective transparency and explainability. The Study identifies 9 principles that are essential to respect human rights in the context of AI: (i) Human Dignity (ii) Prevention of Harm to Human Rights, Democracy, and the Rule of Law (iii) Human Freedom and Human Autonomy (iv) Non-Discrimination, Gender Equality, Fairness and Diversity (v) Principle of Transparency and Explainability of AI Systems (vi) Data Protection and the Right to Privacy (vii) Accountability and Responsibility (viii) Democracy (ix) Rule of Law. The Study is available [here](#).

⁴⁷ Scottish Biometric Commissioner, *Code of Practice on the acquisition, retention, use and destruction of biometric data for criminal justice and policing purposes in Scotland*, November 2022. The Code is available [here](#).

⁴⁸ In its White Paper, the UK Government confirms that, unlike the EU, it does not plan to adopt new legislation to regulate AI, nor will it create a new regulator for AI. Instead, the UK will require existing regulators, including the UK Information Commissioner's Office, to take responsibility for the establishment, promotion, and oversight of responsible AI in their respective sectors. The White Paper outlines 5 core principles regulators will be expected to consider to guide the safe and innovative use of AI in their industries: (i) Safety, Security and Robustness (ii) Transparency and Explainability (iii) Fairness (iv) Accountability and governance (v) Contestability and redress. The White Paper is available [here](#).

⁴⁹ Policing in a Digital World Programme & Rights Based Pathway Pilot, Paper presented to Police Scotland Change Board, 4 April 2023.

stakeholder engagement. This is critical to this complex and highly sensitive area of policing business. I have reviewed the 11 data ethics questions which have been formulated as part of Police Scotland's Rights Based Pathway and considered the legal and regulatory frameworks around police use of biometrics and artificial intelligence, focusing in particular on data protection and human rights considerations. The 11 data ethics questions are a sound starting point but are not sufficiently robust on their own to ensure adequate consideration of compliance with legal, regulatory and governance requirements. A number of more detailed assessments will need to sit behind them.

95. For example, to be able to answer question 8 (*To what degree might the project encroach on individuals' civil liberties, privacy or human rights?*), the following detailed assessments will need to be conducted:
- Consideration of the legal basis of Police Scotland use of biometric technology - i.e. the police powers and police purposes which justify their use.
 - A detailed legal analysis considering the legality of and justification for any interference with human rights, notably in this context, interference with ECHR Art. 8 privacy rights but there will be potential interference with other rights. Specifically in relation to use of CAID, a legal analysis of the impact on children's rights and the completion of a Children's Rights Impact Assessment.
 - An equality and human rights impact assessment.
 - A data protection impact assessment, which should set out how the Data Protection Principles have been met and what safeguards have been put in place.
 - Development of governance protocols around design, development and deployment of digital and biometric technologies by Police Scotland, e.g. safeguards in place to ensure an assessment of the necessity and proportionality of Police Scotland's use at each stage of the design, development and deployment process.
96. Police Scotland's work on developing a Rights Based Pathway in relation to the use of digital and biometric technologies provides an excellent model of how Police Scotland can build on existing processes to strengthen and develop the application and integration of human rights. Against this background, I make the following recommendation.

Recommendation 22

The Police Scotland *Policing in a Digital World Programme* leads should work with data and human rights experts to develop and strengthen its *Rights Based Pathway* for the introduction of all new technologies by Police Scotland.

E. POLICE USE OF DATA

97. The collection and use of personal data for law enforcement purposes constitutes an interference with the right to private life and data protection under ECHR Article 8 and, as such, it must be based on law (clear, foreseeable and accessible), pursue a legitimate aim and be limited to what is necessary and proportionate to achieve that legitimate aim.

98. Police Scotland control a number of databases which contain personal data. It is important it has robust systems in place to regulate and monitor the collation, use, retention and destruction of personal data.
99. Prior to and during the collection of data, Police Scotland should always consider whether the personal data collected is necessary for a particular policing task. Once personal data is collected, a clear link between the person whose personal data is processed and the purpose of the processing (for example, the prevention, investigation or prosecution of a criminal offence) should exist.
100. During meetings with the Police Scotland executive team and the Scottish Police Authority, concerns were raised regarding the Interim Vulnerable Persons Database (IVPD). The personal details of any person coming into contact with the police who is identified as vulnerable is included on the IVPD, with a vulnerability record defined by crime type. This record will be referenced in any contact the individual has with the police in the future. Concerns The SPA is due to audit the IVPD later this year. However, in light of the concerns raised, I make the following recommendation.

Recommendations

23. Police Scotland should review the operation of its Interim Vulnerable Persons Database as a matter of urgency to ensure that it complies with ECHR Article 8 and data protection principles, assessing the threshold for adding individuals to the database, the purposes for which it is used, and protocols around review and retention of records.
24. Police Scotland should develop a bespoke equality, human rights and data protection impact assessment tool to audit all Police Scotland databases.

F. POLICE TREATMENT OF CHILDREN

101. Children and young people come into contact with the police for a range of reasons, including when they are victims of crimes, they witness crimes or when they are accused or suspected of committing offences. Significant human rights issues arise during and following police contact with children. It is important that police engage with children in a manner adapted to reflect the child's mental capacity, stage of development, specific protection needs and which respects children's rights.
102. The policing of children and young people continues to be in the public spotlight, with recent reports raising concerns regarding the treatment of children in places of detention; police use of force against children and young people; strip searching of children by police under stop and search powers; and the online safety of children and young people.⁵⁰ During my meetings with external stakeholders, both the Scottish Police Authority and the Scottish Human Rights

⁵⁰ See, for example, the Joint Report of the Children's Commissioners of Northern Ireland, Scotland and Wales to the United Nations Committee on the Rights of the Child, November 2022 available [here](#).

Commission highlighted the importance of including Police Scotland's treatment of children and young people as part of Police Scotland's human rights framework.

103. Police Scotland has established an implementation group to consider the impact on policing of the forthcoming incorporation of the UN Convention on the Rights of the Child. Against this background, I make the following recommendation.

Recommendation 25

Police Scotland should review and revise its Children and Young People's Strategy and related policies to integrate a rights based approach to Police Scotland child protection and safeguarding practices. In particular, the strategy should:

- a. set out Police Scotland's approach to children and young people who are suspected of crimes and its approach to protecting children and young people who are both victims and perpetrators of crimes, for example, through criminal and sexual exploitation or grooming;
- b. provide training for all officers and staff who work with children to prevent 'adulthoodification', i.e. where police officers and others regard children, especially Black and ethnic minority children, as threats, rather than children who need protection from harm
- c. reflect and integrate the principles and standards set out in the UN Convention on the Rights of the Child.

G. POLICE ACCESS TO OPERATIONAL HUMAN RIGHTS ADVICE

104. Police Scotland's executive team currently have limited access to operational human rights advice in live time as operations are planned and executed. This creates a risk for Police Scotland, particularly in relation to complex operations which directly interfere with human rights. Police Scotland has on occasions taken steps to address this gap by appointing external human rights experts, for example, during the COVID pandemic.

105. Multiple members of the executive team have indicated that access to operational human rights advice on sensitive or complex operations in live time would be of benefit. Executive team members have also indicated that they would appreciate human rights reference notes and caselaw updates to provide guidance on the scope and application of human rights to particular areas of policing business.

106. Access to operational human rights advice provides much needed support to senior officers when they are wrestling with complex operational decisions or designing legal and ethical frameworks for emerging areas of police practice. It is now fairly standard practice amongst large law enforcement agencies to have access to operational legal advice.

107. The majority of lawyers within Legal Services do not have experience in providing operational human rights advice, or the capacity to do so. There is also currently no lawyer with DV or high level vetting clearance which means that Police Scotland does not have access to internal legal advice in relation to sensitive covert operations. And whilst senior officers are able to refer to

ACC Professionalism and Assurance to request assistance in relation to data protection and Equality Act compliance, there is currently no equivalent advice available in relation to human rights compliance.

Recommendation 26

Police Scotland should ensure that its executive team has access to operational human rights advice during the planning and execution of complex or sensitive policing operations.

7. HUMAN RIGHTS OF POLICE SCOTLAND PEOPLE

“When we talk about being a human rights based organisation, I don’t think we understand that human rights should also apply to our people.”

108. An organisation’s culture and values is reflected not only in how it interacts with the people it serves, partners and the wider public, but also in how it treats its own people and the systems it has in place to promote positive performance, productivity and engagement. The development of a tangible human rights culture within Police Scotland therefore demands that Police Scotland incorporate human rights standards throughout its recruitment, performance, promotion and disciplinary processes to demonstrate its commitment to respecting and protecting the human rights of its officers and staff at all levels.

109. Police officers need to understand the benefit of human rights not only for others, but also for themselves. They are confronted with many human rights issues when performing day-to-day policing activities; they are also directly affected when it comes to their own rights. It is important that concerns they raise are taken seriously.

110. During the course of the baseline assessment, police officers and staff at junior and senior levels raised the concern that whilst Police Scotland has a clear focus on respecting and protecting the human rights of the public, victims and witnesses, and offenders, there was not the same focus internally in relation to the human rights of its own officers and staff. Focus group participants and representatives of staff diversity associations and unions were particularly critical. Specific concerns were raised regarding Police Scotland’s grievance and misconduct processes.

Misconduct and grievance processes

“In every organisation things go wrong, employees make mistakes, break the rules or behave inappropriately. An organisation’s integrity is judged on the fairness, effectiveness and transparency of its systems for dealing with such incidents.”⁵¹

111. The bifurcation of responsibility for dealing with grievances and misconduct matters between People & Development (P&D) and the Professional Standards Department (PSD) creates complexity and confusion around misconduct and grievance processes. Members of the executive team and other senior officers report inconsistencies in the treatment of officers

⁵¹ Casey Report, p.202.

and civilian staff which creates perceptions of unfairness in disciplinary and misconduct processes. This is recognised by both P&D and PSD. Specific concerns were raised regarding Police Scotland's grievance and misconduct processes.

112. The grievance procedure is not widely trusted, with officers and staff voicing concerns of unfairness and a lack of transparency. Officers were critical of the lack of transparency and data in relation to grievances and misconduct matters, with some officers indicating that the prevailing culture does not encourage reporting of wrong-doing or misconduct and that victims are reluctant to report for fear of victimisation for speaking out. Officers and staff diversity associations raised concerns regarding discriminatory treatment of Black and ethnic minority officers and staff in relation to grievances and misconduct matters. A number of officers highlighted a 'culture of defensiveness' around the *Rhona Malone* case and suggested that important lessons should be learned about the how internal grievances are handled.
113. The Police Federation raised concerns around the lack of knowledge and understanding of police performance and misconduct regulations amongst supervisors and advocated that training on both should be incorporated into line manager courses. In interviews with the Police Scotland executive team, it was widely agreed that grievances concerning police officers are often progressed by line managers without involving, or seeking guidance from, P&D. This raises concerns around police managers focusing more time on conducting what is akin to a criminal investigation than on resolving the grievance and seeking to repair working relationships.
114. In terms of tackling inappropriate behaviours or conduct of colleagues, focus group participants highlighted a gap between, on the one hand, attempting to challenge lower level inappropriate behaviour informally, on a personal basis, and on the other, reporting more serious misconduct through formal channels such as raising a grievance or using the whistleblowing service. There were concerns that this gap often resulted in no action being taken to tackle lower level inappropriate behaviours of officers or staff, or any formal record being made of such behaviour. Instead, the offending officer or staff member is moved to another area of the organisation and facilitated to carry on bullying or mistreating colleagues. It was widely agreed that Police Scotland should develop a way to ensure patterns of lower level inappropriate behaviour are identified and addressed.
115. There appears to be different views at senior level on the correct approach to dealing with grievances. One view advocates responding to such grievances through a disciplinary or criminal investigation lens, the other through a more reparative approach, which recognises the breakdown in relationships and works to resolve it. What is clear is that a flexible and constructive approach to dealing with behavioural issues in the early stages would address some of the concerns highlighted above.

116. As both Dame Elish Angiolini⁵² and Baroness Casey⁵³ reflected in their respective reports, how members of police services behave towards each other in their professional contexts has an important public interest dimension. If officers behave badly towards each other, the prospect of fair treatment to members of the public is significantly diminished.
117. Internal grievance and misconduct processes must reflect and uphold the values of Police Scotland as set out in the Code of Ethics. They must be fair; non-discriminatory;⁵⁴ transparent; conducted in a timely manner and able to identify patterns of unacceptable behaviour to ensure that repeated or escalating misconduct is identified and addressed. To command the confidence of officers and staff that actions will be taken when concerns around conduct are raised, Police Scotland should demonstrate that misconduct allegations are more likely to be acted upon than dismissed. It is also important that Police Scotland consider how it disseminates information regarding misconduct proceedings to support positive behavioural and cultural change.
118. Against this background, I make the following recommendations.

Recommendations

27. Police Scotland should review its grievance and disciplinary processes to ensure that they are fair, non-discriminatory, transparent, conducted in a timely manner and able to identify patterns of unacceptable behaviour.
28. Police Scotland's People & Development and Professional Standards Department should work together to ensure there is parity in the organisational approach to misconduct by police officers and civilian staff.
29. Police Scotland should develop a *Learning the Lessons Factsheet* setting out key findings and learning from internal⁵⁵ and external⁵⁶ misconduct investigations and proceedings. The Factsheet should be disseminated to officers and staff on a regular basis.

Sexism and Misogyny

119. Police Scotland has recently completed important internal work⁵⁷ investigating levels of sexism and misogyny in the organisation. This work has been welcomed as a proactive approach and 'testament to the fact that Police Scotland is trying to tackle' unacceptable discriminatory behaviours and conduct.⁵⁸ The findings are stark: reports of inappropriate and discriminatory behaviour and unwanted sexual advances, including from supervisors and

⁵² Dame Elish Angiolini, *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing: Final Report*, November 2020.

⁵³ Baroness Casey Review, *Final Report*, An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service, March 2023.

⁵⁴ A number of reviews of police misconduct systems have evidenced the existence of both racial and gender disproportionality and disparity. See, for example, the Casey Report pp.203-205.

⁵⁵ Conducted by PSD and P&D.

⁵⁶ Conducted by the Police Investigations and Review Commissioner and the Crown Office.

⁵⁷ The work included an online survey, focus groups and interviews.

⁵⁸ Strategy, Insight and Engagement, *Understanding Sexism and Misogyny: Interim Findings*, November 2022, p.7.

senior managers; a 'boys club' culture in certain areas of policing; discrimination in promotion opportunities; lack of trust in the grievance process, with grievances not taken seriously or acted upon; fear of victimisation for speaking out.⁵⁹

120. Police Scotland, like all public authorities in the UK, have positive obligations under the Human Rights Act 1998 and the Equality Act 2010 to protect women and girls from discrimination, harassment and violence. Police Scotland needs to take allegations of discrimination and violence towards its personnel extremely seriously. It also needs to maintain and uphold its values and professional standards by dealing with breaches of conduct promptly and effectively.

121. I commend Police Scotland for taking a pro-active approach to engaging with its officers and staff to hear about their experiences of sexism and misogyny and to establishing a Gender Equality and Misogyny Working Group and, more recently, a Delivery Board. In light of the findings on sexism and misogyny, it is clearly important that the Working Group review Police Scotland grievance and misconduct processes to ensure complaints regarding discriminatory attitudes and behaviours are properly recorded and acted upon. Against this background, I make the following recommendations.

Recommendations

30. Police Scotland should disseminate its findings on sexism and misogyny and set out its zero tolerance approach to tackling discriminatory attitudes and behaviours, harassment and inappropriate sexual conduct.

31. Police Scotland's Gender Equality and Misogyny Working Group should review the grievance and misconduct processes to ensure (i) concerns raised regarding discriminatory attitudes and behaviours, harassment and inappropriate sexual conduct are properly recorded and acted upon and (ii) there is in place a system to identify patterns of inappropriate behaviour of officers or staff and escalating incidents which may indicate predatory behaviour.

32. Police Scotland should monitor complaints of inappropriate behaviours and sexual misconduct and their outcomes.

33. Police Scotland should develop a safeguarding policy on how it responds to police officers and staff who disclose domestic abuse or sexual violence perpetrated by another officer or member of staff.

Use of social media and privacy rights

122. In recent years, there have been a number of important legal decisions on police officers' use of social media.⁶⁰ In 2019, ten police officers sought to judicially review the decision of Police

⁵⁹ Strategy, Insight and Engagement, *Understanding Sexism and Misogyny: Interim Findings*, November 2022, pp.4-6.

⁶⁰ *B, C & Ors v Chief Constable of the Police Service of Scotland* [2019] CSOH 48 & [2020] CSIH 61; *Steele v Deputy Chief Constable of the Police Service of Scotland* [2022] CSIH 10.

Scotland to recover and use electronic messages sent from and shared amongst them via *WhatsApp* for the purpose of bringing misconduct proceedings against them (the *WhatsApp* case). The officers argued, amongst other things, that in using their *WhatsApp* messages to bring misconduct proceedings, Police Scotland had violated their rights to privacy under ECHR Article 8. In 2022, the General Secretary of the Scottish Police Federation sought a declaration that the decision by Police Scotland to institute misconduct proceedings against him after he posted on *Twitter* was in violation of his right to freedom of expression under ECHR Article 10.

123. During the course of my baseline assessment work and discussions during interviews and focus groups, it has become clear that the outcome of these legal cases are not well understood. In relation to the *WhatsApp* case, whilst ACC Assurance and Professionalism issued a statement in 2019⁶¹ in response to the case and new social media guidance was issued by Police Scotland in 2022,⁶² there is a general and widespread belief across Police Scotland that police officers have no rights to privacy in relation to their use of social media.

124. This case did not conclude that there could be no right to private life for a serving police officer or private zone of interaction with others. But what it did make clear was that no police officer can reasonably or legitimately expect Article 8 to provide a shield against the consequences of any and all communications to fellow officers, no matter how much they undermine or violate the standards he or she is expected to uphold. The officers in the *WhatsApp* case were held to have no reasonable expectation of privacy because of (i) the nature of the content of the messages, which was “blatantly sexist and degrading, racist, antisemitic, homophobic, mocking of disability and include[d] a flagrant disregard for police procedures by posting crime scene photos of current investigations”, and (ii) their status as holders of the public office of constable, whereby they had accepted certain restrictions on their private life⁶³ and were subject to a strict regulatory framework.⁶⁴ In light of the clear confusion surrounding this case, I make the following recommendations.

Recommendations

34. Police Scotland should in the short term issue a short guidance note on the *Whats App* case, *BC & Ors v Chief Constable, Police Scotland*, clarifying its impact on the ECHR Article 8 rights of police officers.

35. Police Scotland should establish as a matter of standard practice the procedure of disseminating short guidance notes on important legal cases which relate to, or impact on, the human rights of Police Scotland personnel.

⁶¹ *Professional Standards in an online space*, 3 July 2019.

⁶² *Safeguarding advice on use of social media and messaging services*, 29 April 2022.

⁶³ Police Service of Scotland Regulations 2013 Reg. 4 and Sch. 1 (restrictions on the private life of constables)

⁶⁴ Police Service of Scotland (Conduct) Regulations 2014, Schedule 1 (Standards of Professional Behaviour).

8. ACCOUNTABILITY: POLICE SCOTLAND RESPONSE TO EXTERNAL SCRUTINY AND OVERSIGHT

“We talk about being a learning organisation but what happens when things don’t go well and adverse findings are made against Police Scotland or worse, Police Scotland violates people’s rights? We have improvements to make here.”

125. Recent events demonstrate that where serious events result in independent investigations or inquiries of the police, there is a risk that the senior police leadership response demonstrates a higher level of loyalty to the organisation than to the public, i.e. the police service media management is focused more on (protecting the) reputation of the organisation and its staff than on acknowledging wrongdoing or organisational failure and demonstrating an ethical and value-informed response to learn the lessons and deliver improvements in policing going forward.⁶⁵
126. Police Scotland is held to account through external oversight, inspections, investigations and inquiries. It is important that Police Scotland responds to external scrutiny to demonstrate its commitment to learning lessons from mistakes and delivering improvements in policing. As part of the baseline assessment, I met with external policing oversight bodies, including the Scottish Police Authority (SPA), Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS) and the Police Investigations and Review Commissioner for Scotland (PIRC). I also reviewed external reviews of Police Scotland completed over the last 3-5 years and Police Scotland’s action in response.⁶⁶
127. Police Scotland’s has a mixed record in its response to recommendations made following external reviews, inspections or investigations or findings of internal reviews and audits. Often, following a high-profile operation or inspection or inquiry, Police Scotland sets up a Short Life Working Group to carry out focused activity in the short term in response. The limitation with this approach is that it does not guarantee that learning is embedded *throughout* the organisation to make the long term change needed.
128. A number of members of the executive team reflected that Police Scotland is improving its response to adverse findings identified as part of public inquiries, external reviews and internal reviews or debriefs but recognised that there are still gaps in the organisational learning process and Police Scotland still has a distance to travel to achieve the virtuous cycle of continuous improvement.

⁶⁵ Discussing the Sarah Everard Vigil, Baroness Casey noted that the Metropolitan Police (MPS) “failed to recognise the significance of the murder of Sarah Everard, why there was such anger and grief and their own role within that. Their own abhorrence of Sarah Everard’s murder did not extend to a recognition of how badly let down women in London felt by the [MPS] itself... This tendency to focus inwards, on their own feelings and their own officers and not see or accept things from other perspectives is a recurring feature of [MPS] culture”: Casey Report, p33.

⁶⁶ Including PIRC Reports; HMICS inspections including HMICS Thematic Review of Hate Crime (2021); HMICS Thematic Review of Police Scotland Training and Development Phase 2 (2021); Thematic Inspection of Domestic Abuse Phase I (2023); PSNI Independent review of performance, culture and conduct following the Rhonda Malone Employment Tribunal decision (Operation FUSTIC) 2022; Dame Elish Angiolini QC Independent Review of Complaints Handling, Investigations and Misconduct in relation to Policing (2020) (Angiolini Report); and Scottish Human Rights Commission reports related to Police Scotland.

129. In recent times, through its response to the recommendations made in the Angiolini Report and the adoption of its Policing Together strategy, Police Scotland has demonstrated its aspiration to be a proactive and learning organisation, willing to be open and reflective by co-opting external stakeholders⁶⁷ to provide challenge and to identify strategic learning and recommendations for improvement. And, as the Sheku Bayoh Inquiry continues, Police Scotland is working closely with its legal counsel to identify organisational learning points *as they arise* and ensure these are fed back into organisational policy development, training design and operational learning. It is critical that it does so.

Recommendation 36

Police Scotland should respond transparently and pro-actively to adverse findings made against it and monitor implementation of recommendations to ensure action is taken to embed learning across the organisation and improve policing practice.

9. FUTURE PROOFING POLICE SCOTLAND'S HUMAN RIGHTS FRAMEWORK

Scotland's Human Rights Bill

130. The Scottish Government plans to introduce a Human Rights Bill which will incorporate four UN Human Rights treaties into Scots Law and enhance human rights protections for women, people with disabilities and minority ethnic communities. This will build on current work to incorporate the UN Convention on the Rights of the Child. Subject to devolved competencies, the new Bill will include specific rights from the following UN treaties:

- the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- the Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- the Convention on the Rights of Persons with Disabilities (CRPD)

131. Police Scotland Legal Services comprise around 30 lawyers split between two professional teams: Litigation & Advice⁶⁸ and Contracts & Commercial.⁶⁹ Legal Services provide advice on a wide range of matters raising significant human rights issues, including sexual offences and associated prevention and restriction of sexual harm orders; children; Police Scotland's threat to life standard operating procedure; biometrics; public order and housing.

132. Whilst Police Scotland's lawyers have expertise on human rights relating to specific areas of legal practice, they recognise that they will have to develop their knowledge of international human rights law in response to the Scottish Government plans to incorporate these four international human rights treaties into domestic law. It is important that Police Scotland takes steps now to ensure it has the knowledge and capability to respond to the expanded human

⁶⁷ Through the Policing Together Independent Review Group.

⁶⁸ Which primarily advises People & Development and Professional Standards Department and also provides advice on certain operational matters, primarily public order.

⁶⁹ Which advises on contracting/ commissioning and property conveyancing.

rights and equality duties it will have under this new legislation. Against this background, I make a final recommendation.

Recommendation 37

Police Scotland Legal Services should take steps to strengthen its knowledge of the four international human rights treaties due to be incorporated into domestic law and ensure it has the capability to advise Police Scotland on its obligations under Scotland's forthcoming Human Rights Act.

Scotland's National Human Rights Action Plan

133. In March 2023, the Scottish Government published Scotland's second national human rights action plan. SNAP 2⁷⁰ is a strategic plan of 54 recommended, practical actions to be delivered by Scottish public bodies (including Police Scotland), civil society organisations and rights holders, working together. Its purpose is to carry out coordinated human rights activity across Scotland's public bodies and civil society, promote greater awareness of human rights and advance the realisation of human rights.

134. The SNAP Leadership Panel identified 7 medium term outcomes for SNAP 2 to achieve by 2026.

1. *More rights holders have a greater understanding of how human rights affect their lives.*
2. *More rights holders know about, understand and support international human rights.*
3. *More rights holders are fully and meaningfully involved in informing, shaping, implementing and/or monitoring a rights-based approach in a range of contexts.*
4. *Gaps in the protection and realisation of people's rights are being systematically identified.*
5. *Disaggregated equality and human rights data is being collected and used to enable a more informed analysis of gaps in rights being realised.*
6. *Public bodies have a better understanding of human rights and a human rights-based approach.*
7. *Public bodies are increasingly and systematically acting on monitoring and feedback from rights holders to improve law, policy and practice across a wide range of rights issues.*

135. The recommendations set out in this report will support Police Scotland in meeting its responsibilities under SNAP 2 outcomes 3, 4, 6 and 7.

JANE GORDON

8 MAY 2023

⁷⁰ SNAP 2 Scotland's Second National Human Rights Action Plan (2023-2030) March 2023.

RECOMMENDATIONS

1. RELATIONSHIP BETWEEN HUMAN RIGHTS, PROFESSIONAL STANDARDS AND POLICE SCOTLAND'S CODE OF ETHICS

1. Police Scotland should consider placing the Code of Ethics on a statutory footing to entrench it as a framework for ethical policing across Scotland. Police Scotland should revise the Code of Ethics to base it more explicitly on human rights and equality standards.
2. Police Scotland should introduce an annual face-to-face '*Values and Standards*' talk across all local divisions where senior managers talk to frontline officers about Police Scotland values, human rights and ethical policing and frontline officers have the opportunity to hold senior managers to account for upholding the standards of the Code of Ethics.

2. POLICE SCOTLAND ORGANISATIONAL APPROACH TO HUMAN RIGHTS

3. The Police Scotland executive team should develop a common understanding and narrative of what a human rights based approach to policing means to Police Scotland. This should be delivered through a facilitated session with the full executive team and communicated both internally to its officers and staff and externally to stakeholders and the wider public.

3. POLICE SCOTLAND ORGANISATIONAL KNOWLEDGE AND APPLICATION OF HUMAN RIGHTS

4. Police Scotland should develop a stand-alone human rights training package to establish a base level of human rights understanding across the organisation, in the same way that it has developed a mandatory EDI training package. Training should be based around case studies relevant to core policing business and should be refreshed every year to reflect developments in human rights law and practice.
5. The standard templates for papers for Senior Leadership Board and all other Boards should be revised to include an explicit section on human rights which requires the author to identify the human rights engaged and provide a justification for any interference and action taken in mitigation.

4. INTEGRATION OF HUMAN RIGHTS IN POLICE TRAINING AND DEVELOPMENT

6. Police Scotland should ensure that human rights standards and principles form a central part of the new Police Scotland learning and development strategy and training curriculum. Learning Training and Development should include an individual with human rights expertise on its strategy working group.
7. Police Scotland should recruit a human rights adviser to conduct an audit for Learning Training and Development of key training programmes, including Probationer Training and Operational Safety Training, to ensure that the Code of Ethics and human rights principles and standards are effectively integrated and updates and developments in human rights

law and practice incorporated. Learning Training and Development should aim to complete the audit within the next 6 months.

8. Police Scotland Operational Safety Training should be reviewed and revised as a matter of priority. Human rights should be fully integrated across OST modules and thresholds for the use of force made clear. Training on negotiation and liaison, especially in relation to police response to vulnerable persons/ persons with mental health issues, should be incorporated so that response officers exhaust all possible non-UOF options before deploying force.
9. Police Scotland should ensure that its continuous professional development (CPD) curriculum is a vehicle for embedding Police Scotland values, including the Code of Ethics, human rights and EDI. Human rights should be integrated into all CPD courses.
10. Police Scotland should review the content of *Your Leadership Matters* to ensure that Code of Ethics and human rights considerations have been meaningfully incorporated into the content of the programme.
11. Police Scotland should include human rights as a core element of the 8-week Chief Superintendent Induction Programme.
12. Police Scotland should consider introducing human rights refresher training at senior officer level, with case studies applied to the core areas of PS business.
13. Police Scotland should establish a systematic process for reviewing important external report and inquiry findings, assessing policies, processes and practices in light of important findings and disseminating key learning points across the organisation.

5. INTEGRATION OF HUMAN RIGHTS IN POLICE SCOTLAND STRATEGIES AND POLICIES

14. Police Scotland should integrate EQHRIAs as part of its corporate services redesign, change and transformation programmes to ensure human rights and equality standards are built in to the design and delivery of all Police Scotland services.
15. Police Scotland should develop bespoke EQHRIA for key business areas and policing activities with the objective of more fully integrating human rights and equality considerations in the development of all corporate strategies, business plans, organisational policies and procedures and national policing guidance.
16. Police Scotland departmental leaders should be responsible for completing EQHRIAs at the outset of strategy and policy development processes; ensuring that human rights principles are integrated into their strategies and policies; taking the necessary action to address and mitigate any identified negative human rights or equality impacts.

17. Police Scotland should set up a system to ensure that when an EQHRIA identifies potential negative human rights or equality impacts, these are monitored and the strategy, policy or practice reviewed after one year.
18. Police Scotland should review its approach to public and internal consultation to ensure more meaningful participation in the development of Police Scotland strategies, policies and practices.

6. INTEGRATION OF HUMAN RIGHTS AT OPERATIONAL LEVEL

19. Police Scotland should review and revise its policy on the use of force as a matter of urgency. The policy should clearly define the relevant legal tests for the use of force and provide guidance on the human rights standards and principles relevant to police use of force, in particular the requirements of Article 2. The policy should comply with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials.
20. Police Scotland should review and revise its training and guidance on the use of restraint to ensure it is accurate, up-to-date, applies relevant human rights principles and properly considers human rights and equality impacts.
21. Police Scotland should establish a system for disseminating important caselaw developments to public order commanders. These should comprise a case summary setting out key legal principles and their operational relevance.
22. The Police Scotland *Policing in a Digital World Programme* leads should work with data and human rights experts to develop and strengthen its *Rights Based Pathway* for the introduction of all new technologies by Police Scotland.
23. Police Scotland should review the operation of its Interim Vulnerable Persons Database as a matter of urgency to ensure that it complies with ECHR Article 8 and data protection principles, assessing the threshold for adding individuals to the database, the purposes for which it is used, and protocols around review and retention of records.
24. Police Scotland should develop a bespoke equality, human rights and data protection impact assessment tool to audit all Police Scotland databases.
25. Police Scotland should review and revise its Children and Young People's Strategy and related policies to integrate a rights based approach to Police Scotland child protection and safeguarding practices. In particular, the strategy should:
 - a. set out Police Scotland's approach to children and young people who are suspected of crimes and its approach to protecting children and young people who are both victims and perpetrators of crimes, for example, through criminal and sexual exploitation or grooming;
 - b. provide training for all officers and staff who work with children to prevent 'adulthood', i.e. where police officers and others regard children, especially

Black and ethnic minority children, as threats, rather than children who need protection from harm; and

- c. reflect and integrate the principles and standards set out in the UN Convention on the Rights of the Child.

- 26. Police Scotland should ensure that its executive team has access to operational human rights advice during the planning and execution of complex or sensitive policing operations.

7. HUMAN RIGHTS OF POLICE SCOTLAND PEOPLE

- 27. Police Scotland should review its grievance and disciplinary processes to ensure that they are fair, non-discriminatory, transparent, conducted in a timely manner and able to identify patterns of unacceptable behaviour.
- 28. Police Scotland's People & Development and Professional Standards Department should work together to ensure there is parity in the organisational approach to misconduct by police officers and civilian staff.
- 29. Police Scotland should develop a *Learning the Lessons Factsheet* setting out key findings and learning from internal⁷¹ and external⁷² misconduct investigations and proceedings. The Factsheet should be disseminated to officers and staff on a regular basis.
- 30. Police Scotland should disseminate its findings on sexism and misogyny and set out its zero tolerance approach to tackling discriminatory attitudes and behaviours, harassment and inappropriate sexual conduct.
- 31. The Police Scotland Gender Equality and Misogyny Working Group should review the grievance and misconduct processes to ensure (i) concerns raised regarding discriminatory attitudes and behaviours, harassment and inappropriate sexual conduct are properly recorded and acted upon and (ii) there is in place a system to identify patterns of inappropriate behaviour of officers or staff and escalating incidents which may indicate predatory behaviour.
- 32. Police Scotland should monitor complaints of inappropriate behaviours and sexual misconduct and their outcomes.
- 33. Police Scotland should develop a safeguarding policy on how it responds to police officers and staff who disclose domestic abuse or sexual violence perpetrated by another officer or member of staff.

⁷¹ Conducted by PSD and P&D.

⁷² Conducted by the Police Investigations and Review Commissioner and the Crown Office.

34. Police Scotland should in the short term issue a short guidance note on the *Whats App* case, *BC & Ors v Chief Constable, Police Scotland*, clarifying its impact on the ECHR Article 8 rights of police officers.
35. Police Scotland should establish as a matter of standard practice the procedure of disseminating short guidance notes on important legal cases which relate to, or impact on, the human rights of Police Scotland personnel.

8. ACCOUNTABILITY: POLICE SCOTLAND RESPONSE TO EXTERNAL SCRUTINY AND OVERSIGHT

36. Police Scotland should respond transparently and pro-actively to adverse findings made against it and monitor implementation of recommendations to ensure action is taken to embed learning across the organisation and improve policing practice.

9. FUTURE PROOFING POLICE SCOTLAND'S HUMAN RIGHTS FRAMEWORK

37. Police Scotland Legal Services should take steps to strengthen its knowledge of the four international human rights treaties due to be incorporated into domestic law and ensure it has the capability to advise Police Scotland on its obligations under Scotland's forthcoming Human Rights Act.

APPENDIX 1 HUMAN RIGHTS BASELINE ASSESSMENT

TITLE: Police Scotland Human Rights Framework – Baseline Assessment

PROCESS OWNER: DCC Professionalism, Digital and Transformation.

PURPOSE: The purpose of the Baseline Assessment is to establish Police Scotland's current organisational approach to human rights. The intention is to identify organisational strengths, where Police Scotland is already effectively integrating human rights into policing activities, and weaknesses or gaps, where further progress is required.

REMIT: The Baseline Assessment will comprise three core elements:

1. How Police Scotland currently integrates human rights, both organisationally and operationally, into day-to-day policing activities. It will consider the following:
 - Levels of organisational knowledge/application of human rights.
 - The role of human rights in organisational and operational decision making.
 - How human rights are integrated into Police Scotland training and policies.
 - The role of human rights in induction, promotion and disciplinary processes.
 - Factors impeding a human rights based approach to policing in Scotland.
2. Organisational and public perceptions of Police Scotland's commitment to human rights, in order to identify how human rights are prioritised and communicated, both internally and externally. This will focus around three questions:
 - How Police Scotland's senior command demonstrates the importance the organisation attaches to human rights;
 - How Police Scotland communicates its commitment to human rights to the public; and
 - How external bodies view Police Scotland's human rights record.
3. The processes Police Scotland has in place to respond to adverse human rights impacts or violations it causes, considering:
 - Police Scotland's approach to assessing actual and potential adverse human rights impacts in day to day policing activities.

- How Police Scotland responds to internal and external findings of adverse human rights impacts and/or violations and changes made to organisational culture as a result.

METHODOLOGY:

The methodology of the baseline assessment will include:

- Literature review including strategic documents, policies, training materials and internal/external reviews.
- In person or virtual meetings with members of Police Scotland's executive command and other senior officers and staff.
- Focus groups with officers and members of police staff of varying ranks and grades, discussing views on Police Scotland's organisational approach to human rights and perceptions of the value of human rights in day to day policing activities.
- Meetings with key external stakeholders, including Scottish Police Authority, HMICS, Police Investigations and Review Commissioner and Scottish Human Rights Commission.
- Additional meetings or consultation with Police Scotland officers or staff as deemed necessary.
- Analysis of the foregoing and submission of a Baseline Assessment with recommendations.

GOVERNANCE:

The Baseline Assessment will be consistent with Police Scotland's existing governance arrangements, specifically:

- Police Scotland EDI Secretariat to manage all communications and administrative requirements of the Baseline Assessment.
- Confidentiality will be maintained throughout, enabling officers and staff of Police Scotland to have an open dialogue on policing challenges and practices, and the organisation to receive challenge, feedback and advice.

LEVELS OF APPROVAL:

Full approval rights for the completion of the Human Rights Baseline Assessment

SECRETARIAT:

Provided by Police Scotland EDI Secretariat.

RESPONSIBILITIES:

Reports to Human Rights Framework SLWG.

APPENDIX 2 LIST OF INTERVIEWEES & FOCUS GROUP PARTICIPANTS

INTERVIEWEES

POLICE SCOTLAND OFFICERS AND STAFF

Chief Constable, Sir Iain Livingstone QPM
DCC Taylor QPM, Professionalism, Strategy and Engagement
DCC Graham, Local Policing
DCC Connors QPM, Crime and Operational Support
DCO Page, Corporate Support
ACC Spiers, Professionalism and Assurance
ACC Mairs, Local Policing East
ACC Williams, Operational Support
ACC Freeburn, Organised Crime, Counter Terrorism & Intelligence
ACC Smith, Public Protection & Local Crime
ACC Bond, Local Policing North & C3
ACC Ritchie, Partnership, Prevention & Community Wellbeing
ACC Johnson, Local Policing West
ACC Duncan, Policing Together
Tom McMahon, Director of Strategy and Analysis
Nicky Page, People and Development
James Gray, Chief Financial Officer
Duncan Campbell, Head of Legal Services
Chief Supt Catriona Henderson, Professional Standards
Chief Supt Sutherland and Supt Croft, Greater Glasgow Divisional Commander
Chief Supt Faroque Hussain
Legal Services Team
Equality, Diversity & Inclusion Secretariat
Strategy, Insight and Engagement

Police Scotland Policing Together Independent Review Group

Police Scotland Staff Diversity Associations

██████████ Christian Police Association
██████████ Semper Scotland
██████████ Semper Scotland
██████████ Christian Association
██████████ Scottish Police Muslim Association
██████████ Scottish Women's Development Forum
██████████ LGBTI Police Association

Police Scotland Unions

David Kennedy, General Secretary, Scottish Police Federation

EXTERNAL STAKEHOLDERS

Martyn Evans, Chair, Scottish Police Authority
Craig Naylor, HM Chief Inspector of Constabulary in Scotland
Michelle Macleod, Police Investigations and Review Commissioner
Ian Diddy, Chair, Scottish Human Rights Commission

FOCUS GROUP PARTICIPANTS

Constables Focus Group

██████████ Professional Standards Division
██████████ J Division
██████████, Professional Standards Division
██████████, C Division
██████████, Specialist Crime Division
██████████, Leadership Training and Development

Sergeants and Inspectors Focus Group

██████████, E Division
██████████, N Division
██████████, G Division
██████████, Operational Support Division
██████████ Policy Support
██████████, Specialist Crime Division
██████████, Specialist Crime Division
██████████, C Division
██████████, Specialist Crime Division
██████████, Criminal Justice Services Division

Superintendents Focus Group 1

██████████, G Division
██████████, Resource Planning
██████████, Specialist Crime Division
██████████, C3
██████████, Specialist Crime Division

Superintendents Focus Group 2

██████████, G Division
██████████, Operational Support Division
██████████, C Division
██████████, E Division