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LETTER SENT BY E-MAIL ONLY

Audrey Nicoll MSP
Convenor, Criminal Justice Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

7 June 2024

CE/044/2023

Dear Convenor

PARALLEL CRIMINAL / MISCONDUCT PROCEEDINGS

I write in response to further information requested on 31 May 2024 regarding the potential for criminal and misconduct proceedings to run in parallel.

I have summarised the position in relation to the Authority's handling of misconduct allegations against senior officers at the rank of Assistant Chief Constable (ACC) and above. I have also outlined the legislative arrangements which regulate Police Scotland's handling of allegations against officers of all other ranks.

The arrangements for senior officers

Regulation 7 of the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 states that where there is a reasonable inference that a senior officer may have committed a criminal offence, the Authority must refer the matter to the prosecutor. Regulation 7 also allows the Authority to suspend or postpone misconduct proceedings until the prosecutor confirms that a) no criminal proceedings are to be taken, or b) any criminal proceedings to be taken are concluded. It is correct that the decision to suspend or postpone misconduct proceedings is discretionary. In practice, however, such decisions are influenced heavily by the views of the prosecutor. For example, if the prosecutor were to advise that criminal

proceedings might be prejudiced by continuing with misconduct proceedings, the Authority would give this view considerable weight.

The arrangements for other officers

Misconduct proceedings against all officers below the rank of Assistant Chief Constable are regulated by the Police Service of Scotland (Conduct) Regulations 2014. Regulation 9 of the 2014 Regulations is similar to Regulation 7 of the Senior Officer Regulations outlined above. Regulation 9 allows the Deputy Chief Constable the discretion to suspend or postpone misconduct proceedings pending the outcome of criminal proceedings.

Police Scotland's approach is that notwithstanding regulation 9, the ability to progress any conduct investigations is limited and largely restricted, and that it therefore remains a necessity to suspend and postpone proceedings.

I trust this addresses the Committee's further enquiries. Please do not hesitate to get in touch if you require more information.

Yours sincerely

A handwritten signature in black ink that reads "Lynn Brown." The signature is written in a cursive, slightly slanted style.

LYNN BROWN OBE
Chief Executive